

***United States Court of Appeals
for the Second Circuit***



APPENDIX

No. 74-2150

United States Court of Appeals FOR THE SECOND CIRCUIT

B

THOMAS W. SEELER, REGIONAL DIRECTOR OF THE THIRD
REGION OF THE NATIONAL LABOR RELATIONS BOARD,
FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellant,

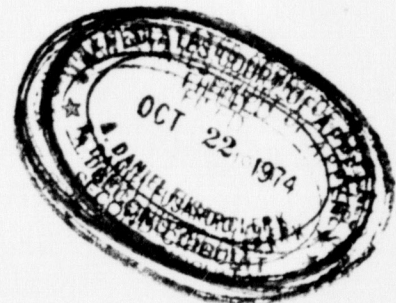
v.

THE TRADING PORT, INC.,

Respondent-Appellee.

On Appeal from an Order of the United States
District Court for the Northern District of New York

APPENDIX



MARVIN ROTH,
Deputy Assistant General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

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APPENDIX

THOMAS W. SEELER, REGIONAL DIRECTOR OF
THE THIRD REGION OF THE NATIONAL LA-
BOR RELATIONS BOARD, FOR AND ON BEHALF
OF THE NATIONAL LAPOR RELATIONS
BOARD,

Petitioner-Appellant,

v.

THE TRADING PORT, INC.,

Respondent-Appellee.

Civil No. 74-CV-115

RELEVANT DOCKET ENTRIES

DATE

1974

March 13	Petition for Temporary Injunction
March 18	Order to Show Cause
March 28	Answer of Respondent
June 4	Findings of Facts and Conclusions of Law
June 24	Order of Judge Charles L. Brieant, Jr., Granting in Part and Denying in Part the Petition.
July 29	Notice of Appeal

* * * * *

PETITION FOR INJUNCTION UNDER SECTION 10(j)
OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable, the Judges of the United States District Court for
the Northern District of New York:

Comes now Thomas W. Seeler, Regional Director of the Third Region of
the National Labor Relations Board (herein called the Board), and petitions
this Court for and on behalf of the Board, pursuant to Section 10(j) of
the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544;
29 U.S.C. Sec. 160 (j)); herein called the Act), for appropriate injunctive
relief pending the final disposition of the matters involved herein pending
before the Board on a Complaint of the General Counsel of the Board charging
that The Trading Port, Inc. has engaged and is engaging in, acts and con-
duct in violation of Section 8(a)(1), (3) and (5) of the Act. In support
thereof, Petitioner respectfully shows as follows:

1. Petitioner is Regional Director of the Third Region of the
Board, an agency of the United States, and files this petition for and on
behalf of the Board.
2. Jurisdiction of this Court is invoked pursuant to Section 10(j)
of the Act.
- 3.(a) On or about December 10, 1973, Local 294, International Brother-
hood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein
called the Union), pursuant to provisions of the Act, filed with the
Board a charge in Case No. 3-CA-5506 alleging that The Trading Port, Inc.

(herein called Respondent), has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1), (3) and (5) of the Act. A true copy of the original charge is attached hereto as Petitioner's Exhibit 1 and made a part hereof.

(b) The aforesaid charge was referred to Petitioner as Regional Director of the Third Region of the Board.

4.(a) On or about January 8, 1974 upon said charge, the General Counsel of the Board, on behalf of the Board, by Petitioner, issued a Complaint and Notice of Hearing, pursuant to Section 10(b) of the Act, alleging that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1), (3) and (5) of the Act. A true copy of said Complaint is attached hereto as Petitioner's Exhibit 2(a) and made a part hereof. Said Complaint was amended by Petitioner, pursuant to Section 10(b) of the Act, on January 15, 1974 and on February 15, 1974. A true copy of each of said amendments is attached hereto as Exhibits 2(b) and 2(c), and made a part hereof.

(b) On October 1, 1973, the Union filed a Petition for Certification of Representative pursuant to Section 9 of the Act, in Case No. 3-RC-5853, upon which Petitioner an election was directed by the undersigned Petitioner for December 4, 1973. On December 7, 1973 the Union filed objections to the aforesaid election, and based upon said objections, the undersigned Petitioner on January 8, 1974 issued a Supplemental Decision and Order Directing Hearing and Order Consolidating Cases and Notice of Hearing, pursuant to Section 102.69 of the Board's Rules and Regulations, in which the allegations set forth in the Complaint in Case No. 3-CA-5506 and the issues raised by the objections as specified by the Order Directing Hearing in Case No. 3-RC-5853 were consolidated for hearing. A true copy of said Supplemental Decision and Order Directing Hearing and Order Consolidating Cases and Notice of Hearing is attached hereto as Exhibit 3 and made a part hereof.

5. On March 5, 1974 a hearing opened before an Administrative Law Judge of the Board on the Complaint and Amendments thereto, referred to

above in subparagraph 4(a) and on the issues specified by the Order Directing Hearing, referred to above in subparagraph 4(b). On March 7, 1974 said hearing was adjourned to March 19, 1974.

6. There is reasonable cause to believe that the allegations of the aforesaid Complaint are true and that the Respondent has engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3) and (5) and 2(6) and (7) of the Act. More particularly, there is reasonable cause to believe that Respondent is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; that Respondent did discriminate, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees to discourage membership in the Union; and that Respondent did refuse to bargain collectively, and is refusing to bargain collectively, with the Union as the exclusive collective bargaining representative designated by a majority of its employees in an appropriate unit. In support thereof, and of the request for injunctive relief herein Petitioner shows as follows:

(a) Respondent is engaged in this judicial district at North Manning Boulevard and Prospect Avenue, in the City of Albany, and State of New York (herein called the Albany Warehouse), and at various other locations in the City of Albany, New York in the wholesale and retail grocery business.

(b) Annually, Respondent, in the course and conduct of its business operations, sells and distributes products, the gross value of which exceeds \$500,000. During the same period of time, Respondent receives goods valued in excess of \$50,000 transported to its Albany Warehouse directly from States of the United States other than the State of New York.

(c) The Union is an organization in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work, and is therefore a labor organization within the meaning of Section 2(5) of the Act. At all times material herein, the Union has been engaged within this judicial district in trans-

acting business and in promoting and protecting interests of its employee members.

(d) From on or about September 1, 1973 to on or about September 8, 1973, Respondent, through its officers, supervisors and agents, as more specifically detailed in Exhibits 2(a), (b) and (c), has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, by interrogating its employees concerning their union membership, activities and desires; threatening its employees with discharge and other reprisals if they became or remained members of the Union or gave any assistance or support to it; threatening its employees that it would close the Albany Warehouse rather than deal with the Union; promising its employees increased vacations, sick pay, increased wages, and other benefits if they refrained from becoming or remaining members of the Union, or giving any assistance or support to it; suggesting to its employees that they form their own grievance committee and deal directly with Respondent rather than through the Union.

(e) From on or about September 10, 1973 to on or about September 23, 1973, Respondent, through its officers, supervisors and agents, as more specifically detailed in Exhibits 2(a), (b) and (c), has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, by threatening its employees with discharge and other reprisals if they became or remained members of the Union or gave any assistance or support to it; threatening its employees that it would close the Albany Warehouse rather than deal with the Union; creating the impression among its employees that it would be futile to select the Union as their bargaining representative; soliciting its employees to return to work from the strike, and offering economic benefits in order to induce them to do so.

(f) From on or about October 8, 1973 to on or about November 30, 1973, Respondent, through its officers, supervisors and agents, as more specifically detailed in Exhibits 2(a), (b) and (c), has interfered with,

restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, by interrogating its employees concerning their union membership, activities and desires; by soliciting its employees not to vote in an upcoming Board election; by telling its employees that they would be recalled to work only if they voted against the Union, or did not vote, in the upcoming Board election; by soliciting its employees to deal directly with Respondent rather than through the Union, and/or to form a Company Union; by threatening its employees that it would not recall the employees who were in favor of the Union; by threatening its employees that it would close the Albany Warehouse if the Union won the election; by promising its employees increased wages if they refrained from becoming or remaining members of the Union, or giving any assistance or support to it.

(g) From on or about September 9, 1973, to on or about September 29, 1973, certain employees of Respondent employed at the Albany Warehouse ceased work concertedly and went out on strike.

(h) The strike described above in subparagraph (g) was caused by the unfair labor practices of Respondent described above and/or below in subparagraphs (d) and (t), and/or was prolonged by the unfair labor practices described above and/or below in subparagraphs (e) and (t).

(i) On or about October 1, 1973, the employees named in Schedule A, of Exhibit 2(a), employed by Respondent at the Albany Warehouse, who had engaged in the strike referred to above in subparagraphs (g) and (h), made unconditional offers to return to their former or substantially equivalent positions of employment.

(j) On or about October 1, 1973, and at all times since, Respondent has failed and refused and continues to fail and refuse to reinstate the employees named above in subparagraph (i) to their former or substantially equivalent positions of employment.

(k) On or about September 29, 1973, Respondent ceased paying its part of the medical insurance premium for its employees named in Schedule B of Exhibit 2(a), employed by Respondent at the Albany Warehouse.

(l) On or about October 1, 1973, Respondent did lay off its employees named in Schedule B of Exhibit 2(a).

(m) On or about November 1, 1973, Respondent did discharge its employees named in Schedule C of Exhibit 2(a), employed by Respondent at the Albany Warehouse.

(n) Since the dates of discriminatory treatment, layoff/and discharge referred to and/or named above in subparagraphs (j), (k), (l) and (m), Respondent has failed and refused, and continues to fail and refuse, to rescind said discriminatory treatment against said employees, and to reinstate said employees to their former or substantially equivalent positions of employment.

(o) Respondent did lay off, discharge and refuse to reinstate, and failed and refused and continues to fail and refuse to reinstate the employees referred to and/or named above in subparagraphs (j), (l), (m) and (n), and did engage in, and is engaging in, the discriminatory conduct described above in subparagraphs (k) through (n) because said employees joined or assisted the Union or engaged in other union activity or concerted activities for the purpose of collective bargaining or mutual aid or protection.

(p) All warehousemen and driver employees employed by Respondent at its warehouse located at North Manning Boulevard and Prospect Avenue, Albany, New York, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

(q) On or about September 4, 1973, a majority of the employees in the unit described and set forth above in subparagraph (p) designated or selected the Union as their representative for the purpose of collective bargaining with Respondent.

(r) At all times since September 4, 1973, the Union has been the representative for the purpose of collective bargaining of the employees in the unit described and set forth above in subparagraph (p), and by virtue

of . Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

(s) Since on or about September 4, 1973, and continuing to date, the Union has requested, and is requesting, Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective bargaining representative of all employees of Respondent in the unit described and set forth above in subparagraph (p).

(t) Since on or about September 4, 1973, and at all times thereafter, Respondent did refuse, and continues to refuse, to recognize and bargain collectively with the Union, notwithstanding that the Union was, since September 4, 1973 the duly designated exclusive collective bargaining representative of the employees as described above in subparagraphs (p), (q) and (r) in that:

(1) Commencing on or about September 1, 1973, and continuing to date, Respondent engaged in the conduct set forth in subparagraphs (d), (e), (f), (j), (k), (l), (m), (n) and (o), in order to undermine the Union and destroy its majority status, and said conduct tended to interfere with the election process, and to preclude the holding of a fair election.

(2) Since on or about September 4, 1973, Respondent has refused, and continues to refuse, to meet and negotiate with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment for the employees in the unit described above in subparagraph (p).

(3) Respondent engaged in the conduct described above in subparagraphs (k) and (l), without notice to, advice of, or consultation with the Union, and without affording the Union an opportunity to bargain concerning the decision of Respondent to make said changes, or their effect.

7. By the acts and conduct set forth in paragraph 6, subparagraphs (d) through (f), (j) through (o), and (t), there is reasonable cause to

believe that the Respondent is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; that Respondent did discriminate, and is discriminating, in regard to the hire and tenure and terms and conditions of employment of its employees to discourage membership in the Union; and that Respondent did refuse to bargain collectively, and is refusing to bargain collectively, with the Union as the exclusive collective bargaining representative of its employees in the unit described above in paragraph 6, subparagraph (p). Thereby Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1), (3) and (5), and 2(6) and (7) of the Act.

8. Upon information and belief, it may thoroughly be anticipated that Respondent will continue unless restrained, the acts and conduct aforesaid or similar or related acts or conduct in violation of Section 8(a)(1), (3) and (5) of the Act, and will continue to interfere with, restrain and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act; to discriminate in regard to the hire and tenure and terms and conditions of its employees, to discourage membership in the Union; and to refuse to bargain collectively with the Union as collective bargaining representative designated by a majority of its employees.

9. Upon information and belief, unless the conduct of the aforementioned flagrant unfair labor practices are immediately restrained, a serious flouting of the Act and of public policies involved in the Act will continue with the result that enforcement of important provisions of the Act and public policy will be thwarted before Respondent can be placed under legal restraint through the legal procedures of Board Order and an enforcement decree. Unless restrained it may be thoroughly anticipated that the Respondent will continue the aforesaid acts and conduct and like and related conduct, during the proceedings before the Board and during any subsequent proceeding before a court of appeal for an enforcing decree, all to the detriment of the policies of the Act and the public interest, with the result that before the Respondent is placed under any legal restraint to comply with the requirements of the Act, Respondent's employees will be

deprived of the rights guaranteed them by Section 8(a)(1) of the Act to be free from the interference, restraint and coercion of the Respondent in the exercise by them of the rights guaranteed them in Section 7 of the Act, and by Section 8(a)(3) of the Act to be free from discrimination because of their activities on behalf of the Union. Further unless immediate injunctive relief is obtained the result will be that Respondent will have accomplished its unlawful objective before it is placed under legal restraint; any remedy afforded by the Board and/or a court of appeals will not effectively dissipate the consequences of the unfair labor practices and, consequently will be ineffectual; the employees of Respondent will be denied their statutory right to be represented for collective bargaining purposes by the Union; the Union's majority status will have been so dissipated by the unfair labor practices that it will be unable to function successfully as an effective collective bargaining representative of the employees; and the employees will be deprived of their right to bargain collectively through a representative of their choice, to the detriment of the policies of the Act, the public interest, the interest of the employees, and the interest of the Union.

10. Upon information and belief, to avoid the serious consequence set forth above, it is essential, just, proper, and appropriate for the purpose of effectuating the policies of the Act and avoiding substantial, irreparable and immediate injury to the public policies, to the Respondent's employees, to the Union, and to the public interest, in accordance with the purposes of Section 10(j) of the Act, that, pending the final disposition of the matters involved herein, which are now pending before the Board, the Respondent be, enjoined and restrained as herein prayed.

WHEREFORE, Petitioner prays:

1. That the Court issue an order directing Respondent to appear before this Court, at a time and place to be fixed by the Court, and show cause, if any there be, why an injunction should not issue as follows:

(A) Enjoining and restraining Respondent, its officers, representatives, agents, servants, employees, attorneys and all members and persons acting

in concert or participation with it or them, pending the final disposition of the matters involved herein pending before the Board, from:

- (a) Interrogating its employees concerning their union membership, activities and desires;
- (b) Threatening its employees with discharge and other reprisals if they became or remained members of the Union or gave any assistance or support to it;
- (c) Threatening its employees that it would close the Albany Warehouse rather than deal with the Union;
- (d) Promising its employees increased vacations, sick pay, increased wages, and other benefits if they refrained from becoming or remaining members of the Union, or giving any assistance or support to it;
- (e) Suggesting to its employees that they form their own grievance committee and deal directly with Respondent rather than through the Union;
- (f) Creating the impression among its employees that it would be futile to select the Union as their bargaining representative;
- (g) Soliciting its employees to return to work from the strike, and offering economic benefits in order to induce them to do so;
- (h) Soliciting its employees not to vote in an upcoming Board election;
- (i) Telling its employees that they would be recalled to work only if they voted against the Union, or did not vote; in the upcoming Board election;
- (j) Soliciting its employees to deal directly with Respondent rather than through the Union, and/or to form a Company Union;
- (k) Threatening its employees that it would not recall the employees who were in favor of the Union;
- (l) Refusing to reinstate, laying off, discharging, and ceasing to pay its part of the medical insurance premium for, its employees, because said employees joined or assisted the Union or engaged in other

union activity or concerted activities for the purpose of collective bargaining or mutual aid or protection;

(m) Refusing to recognize and bargain collectively with the Union as the exclusive collective bargaining representative of all warehousemen and driver employees employed by Respondent at its warehouse located at North Manning Boulevard and Prospect Avenue, Albany, New York, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, or in any manner or by any means failing or refusing, upon request, to meet at reasonable times and bargain with the Union as such representative with respect to rates of pay, wages, hours of employment or any other term or condition of employment.

(n) Laying off, or ceasing to pay its part of the medical insurance premium for, its employees in the aforesaid unit without affording the Union an opportunity to bargain concerning the decision of Respondent to make said changes, or their effect;

(o) In any other manner interfering with, restraining or coercing employees in the exercise of the right to self-organization, to form, join or assist the Union to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or in the exercise of their rights, to refrain from any or all of such activities, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act;

(B) Ordering Respondent:

(a) To offer to the employees listed below immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights and privileges:

Charles Ballou

Thomas Broderick

John D. Cafaro

Gary Deyss

James Dillenbeck

Donald Engel

James Houck

Richard McCoy

Thomas Merwitz

Richard O'Toole

Glenn Passino

Daniel Peasley, Jr.

Fowler Riddick

Robert Robinson

William Savage

Michael Scanlon

James W. Sim, Jr.

Ira Stockwell

Richard Terry

Raymond Valerio

(b) To recognize the Union as the exclusive bargaining representative of all warehousemen and driver employees employed by Respondent at its warehouse located at North Manning Boulevard and Prospect Avenue, Albany, New York excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and to bargain with the Union as such representative with respect to rates of pay, wages, hours of employment or any other term or condition of employment of said employees.

2. That upon return of said Order to Show Cause, the Court issue an order enjoining and restraining Respondent in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper.

DATED at Buffalo, New York, this 13th day of March, 1974.

/s/ Thomas W. Seeler

THOMAS W. SEELER, Regional Director
Third Region
National Labor Relations Board

PETER G. NASH,
General Counsel

JOHN S. IRVING,
Deputy General Counsel

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Acting Regional Attorney, Region 3

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Albany, New York 12207
Telephone: 518/472-2215

* * * * *

Respondent, by Kohn, Bookstein & Karp, its attorneys, for its answer to the petition for injunction under Section 10(j):

- (1) Admits the allegations set forth in paragraphs "1.", "2.", "3.", "4.", "5." and, denying that portion of paragraph "6." which precedes its alphabetized subparagraphs, admits the allegations set forth in its subparagraphs "(a)", "(b)", "(c)", "(g)" and "(p)" of the petition.
- (2) Denies that portion of paragraph "6." which precedes its alphabetized subparagraphs and denies the allegations set forth in "6.(d)", "(e)", "(f)", "(h)", "(n)", "(o)", "(r)", "(t)", "7.", "8.", "9." and "10." of the petition.
- (3) Admits that, on or about October 1, 1973, the employees named in Schedule A of Exhibit 2(a), with the exception of Richard McCoy, Thomas Merwitz and Richard Terry, who had engaged in the strike described in paragraph "6.(g)" of the petition, made unconditional offers to return to employment but Respondent otherwise denies paragraph "6.(i)" of the petition.

- (4) Admits that Respondent, on or about October 1, 1973, reinstated none of the employees named in paragraph "6.(i)" of the petition and has since reinstated none of them except John Biernik, Robert Bishop, Frank Houck, Jr., Donald Johnson and John Robinson; and Respondent otherwise denies paragraph "6(j)" of the petition.
- (5) Admits that, on or about September 29, 1973, Respondent ceased paying its part of the medical insurance premium for the following employees named in Schedule B of Exhibit 2(a): Thomas Broderick, Gary Deyss, James Dillenbeck, Donald Engel, James Houck, Richard O'Toole, Glenn Passino, Donald Peasley, Jr., John Quigley, Fowler Riddick, William Savage, Michael Scanlon, James W. Sim, Jr., Ira Stockwell, and Raymond Valerio; and Respondent otherwise denies paragraph "6.(k)" of the petition.
- (6) Admits that, on or about October 1, 1973, Respondent had no work available to be performed by the employees named in Schedule B of Exhibit 2(a) and otherwise denies paragraph "6.(l)" of the petition.
- (7) Admits that, on or about November 1, 1973, with legitimate and substantial business justification, Respondent, by its vice president, Sam Tabachneck, sent a letter to the employees named in Schedule C of Exhibit 2(a); Respondent hereby incorporates that letter by reference and otherwise denies paragraph "6.(m)" of the petition.
- (8) It without knowledge whether, on or about September 4, 1973, a majority of the employees in an appropriate unit designated or selected the union as their representative for the purpose of collective bargaining with Respondent, as alleged in paragraph "6.(q)" of the petition, and, accordingly, denies paragraph "6.(q)" of the petition.
- (9) Admits that, since on or about September 4, 1973, and thereafter, the Union requested Respondent to bargain collectively with respect to rates of pay, wages, hours of employment and other terms and conditions of em-

ployment as the exclusive collective bargaining representative of all Respondent's employees in an appropriate unit; and Respondent otherwise denies paragraph "6.(s)" of the petition.

Dated at Albany, New York, March 28, 1974.

For R. L.
Edward L. Bookstein for
Kohn, Bookstein & Karp
Attorneys for Respondent
100 State Street
Albany, New York 12207

TO: Thomas W. Seeler, Regional Director
National Labor Relations Board
111 West Huron Street
Buffalo, New York 14202

Local 294, International Brotherhood
of Teamsters, Chauffeurs, Warehouse-
men and Helpers of America
890 Third Street
Albany, New York 12206


Pozefsky, Tocci & Pozefsky
112 State Street
Albany, New York 12207

GENERAL COUNSEL'S EXHIBIT NO. 2(a)

Ledger No. Date 8/29/73

TEAMSTERS' LOCAL NO. 294
 Affiliated with International Brotherhood of Teamsters, Chauffeurs,
 Warehousemen and Helpers, Independent

APPLICATION FOR MEMBERSHIP

Name JAMES A. DILLENBECK (PRINT)
 Street 254 CONSAUL RD.
 City ALBANY (COLONIE) State NY
 Social Security No. 051-22-0333 Date of Birth 1/21/31
 Where Employed TRADING POST INC.
 Employer's Address DOMINION BLVD. ALBANY, NY


I hereby designate Teamsters Local Union 294, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Independent, through its authorized agents, as my representative for collective bargaining and authorize Teamsters Local Union 294 to use this card to seek such recognition from employer.

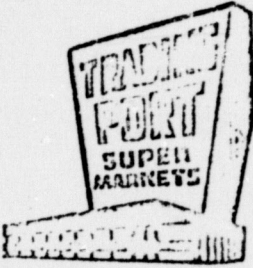
Signed James A. Dillenbeck

THE FOLLOWING EXHIBITS ARE IDENTICAL IN ALL MATERIAL RESPECTS TO GENERAL COUNSEL'S EXHIBIT 2(a) ABOVE EXCEPT FOR THE NAME AND DATE SIGNED:

<u>Exhibit No.</u>	<u>Name</u>	<u>Date</u>
2(b)	Charles Alden Ballou	8/29/73
2(c)	Thomas A. Broderick	8/29/73
2(d)	Gary Deyss	8/29/73
2(e)	Donald Edward Engel	8/29/74
2(f)	Frank R. Houck, Jr.	8/29/73
2(g)	James F. Houck	8/29/73
2(h)	Edward F. Kocienski	8/29/73
2(i)	Richard A. Leblanc	8/29/73
2(j)	Ronald Mac Gilfrey	8/29/73
2(k)	Glenn P. Passino	8/29/73
2(l)	Daniel E. Peasley, Jr.	8/29/73
2(m)	John E. Quigley	8/29/73
2(n)	Fowler J. Riddick	8/29/73
2(o)	John M. Robinson	8/29/73
2(p)	Robert Robinson	8/29/73
2(q)	Archie P. Sharpe, Jr.	8/29/73
2(r)	Raymond M. Valerio	8/29/73
2(s)	Richard W. McCoy	8/29/73
3(a)	John W. Biernik	8/30/73
3(b)	Harry L. Cone	8/30/73
3(c)	Joseph Butler	Undated
3(d)	William Savage	8/31/73
3(e)	Ira Stockwell	9/1/73
3(f)	Donald D. Johnson	9/1/73

<u>Exhibit No.</u>	<u>Name</u>	<u>Date</u>
3(g)	Wilfred E. Vohnoutka	9/1/73
3(h)	Thomas E. Merwitz	9/4/74
7	James William Sim. Sr.	9/1/73
8(a)	Richard P. Terry	8/30/73
8(b)	Burton R. Hulsopple	8/30/73
8(c)	Donald L. Garhartt	8/30/73
8(d)	Robert James Bishop	8/30/73
9	James H. Harter	8/29/73
10(a)	Warren J. Deitz	9/1/73
10(b)	Douglas M. Martin	8/31/73
11	Michael H. Scanlon	8/30/73
12(a)	Joseph Frank, Jr.	8/31/73
12(b)	Thomas E. Garhartt	8/31/73
13	John D. Cafaro	9/1/73
14	Kirk S. Kvale	8/30/73
15	Richard M. O'Toole	8/29/73
16	Wayne A. Smith	8/30/73
17	Delbert G. Pullman	8/31/73

GENERAL COUNSEL'S EXHIBIT NO. 4



TRADING PORT, INC.

NORTH MANNING BLVD. & PROSPECT AVE. ALBANY, NEW YORK

489-2501

September 13, 1973

Dear Trading Port Employee:

An article in the magazine, U. S. News & World Report, backs up a great deal that I have been saying:

"It is unfair to compel law-abiding employers to recognize a union based on a count of pledge cards. They should be entitled to an election by secret ballot.

Let's not forget the employees, either. They, too, are entitled to be able to vote in private before they say, 'I do'

In most cases, when the employee signs a card, he has heard only the union's side of the story. He should have an opportunity to weigh all factors before making his final decision."

So, on September 5, when Local 294 demanded recognition, we suggested the union file a petition so that each of you would have the opportunity to become fully informed, then make your decision and cast a secret ballot. This would have caused you no loss in wages and would have caused Trading Port no loss of customers. Instead, you know what happened.

All of us at Trading Port regret the strike has occurred and is continuing. We think it's senseless. However, we respect your right to support the strike or not, as you see fit. You have the right to make that decision for yourself, and no one is entitled to make that decision for you.

NATIONAL LABOR RELATIONS BOARD
Docket No. _____ OFFICIAL EXHIBIT NO. *See Encl. 4*

Disposition } Identified _____
 } Received _____
 } Date _____

On our part, we have the right to make every lawful effort to operate despite the strike; and we, too, must exercise our right.

Accordingly, commencing September 16, 1973, we must endeavor to hire permanent replacements for those who have elected not to return to work. If you have not returned to work and we hire a person to perform your duties, you will have been permanently replaced and your position will no longer be available.

I hope you will decide to return to work. We would sincerely regret having to replace any of our employees. If you decide to return, the law forbids anyone from trying to stop you. No fellow employee, no 294 representative - no one - is entitled to interfere with your returning to work. Anyone who tries to or threatens to stop you is in violation of the law and will be dealt with accordingly.

Please think about it. This strike hurts you, hurts us, hurts our customers, and helps our competitors! It doesn't improve anyone's disposition. Finally, it's absolutely unnecessary.

Sincerely,

Sam Tabachnick

P.S. Your last earned paycheck is enclosed.

GENERAL COUNSEL'S EXHIBIT NO. 5



TRADING PORT, INC.

NORTH MANNING BLVD & PROSPECT AVE. ALBANY, NEW YORK

489-2501

September 20, 1973

Dear Trading Port Employee:

As I stated in my letter of September 13, "All of us at Trading Port regret the strike has occurred and is continuing." This strike is not only SENSELESS, it has now become UTTERLY RIDICULOUS. Trading Port has suffered a loss of customers and you have been, and WILL CONTINUE TO BE, SEVERELY HURT IN YOUR POCKETBOOKS. In this regard, effective September 29, Trading Port will CEASE TO PAY ANY PART of the Blue Cross/Blue Shield premium due at that time for each striking employee. (We have no desire to hurt you or your family so, we will see to it that Blue Cross/Blue Shield gives you a chance to keep the insurance at your expense.)

I must further stress, as I have previously said, we at Trading Port have the right to make every lawful effort to operate despite the strike. Although I did not have the heart last week to carry out my pledge to do so, I must now actively seek TO HIRE PERMANENT REPLACEMENTS for those of you who choose not to return to work. Accordingly, our advertisements will appear in the HELP WANTED section of this weekend's newspapers. If you have not returned to work by Monday morning, we will then attempt to hire a person to perform your duties, (insofar as we still require help in light of our recent loss of customers), and you will have been permanently replaced with your position no longer available.

In recent weeks, I have heard increasing concern expressed over JOB SECURITY. As I stated to you several weeks ago, NO ONE, I repeat, NO ONE can offer YOU JOB SECURITY; NOT 294 -- NOT TRADING PORT -- NOT YOURSELF. The only ones that can are THE CUSTOMERS. As the saying goes, NO CUSTOMERS NO BUSINESS--NO JOBS--NO SECURITY. I would be hard put if I tried to accurately PINPOINT at this time exactly how many CUSTOMERS have left us PERMANENTLY, but an educated guess, from what I have been told, is a SUBSTANTIAL PROPORTION of our business; and, WHEN CUSTOMERS GO--JOBS GO. Whether you or I like it, unfortunately, that is the way it is.

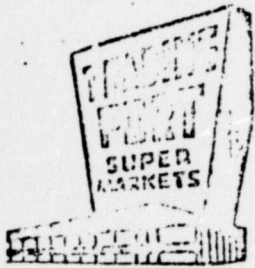
I sincerely hope you will decide to return to work. Izzy and I would deeply regret having to replace any of our employees. If you decide to return, please understand and have CONFIDENCE that THE LAW EXPRESSLY FORBIDS ANYONE FROM TRYING TO STOP YOU. NO FELLOW EMPLOYEE, NO 29A REPRESENTATIVE--NO ONE MAY INTERFERE WITH YOUR RIGHT TO RETURN TO WORK! Anyone who tries to, or threatens to stop you, is in violation of the law and will be dealt with accordingly. This is still the USA and the STRONG ARM belongs to gangsters NOT law abiding citizens.

Please consider your position as of now, and if you have any questions concerning your returning to work or other related problems, please feel free to contact Izzy, myself, or Avrum, who, incidentally, is now PERSONNEL DIRECTOR for Trading Port.

Sincerely,

Sam Tabachnick

GENERAL COUNSEL'S EXHIBIT NO. 6



TRADING PORT, INC.

NORTH MANNING BLVD. & PROSPECT AVE. ALBANY, NEW YORK

489-2501

November 1, 1973

Mr. James Dillenbeck:

We here at Trading Port have recently had a full opportunity to evaluate the way in which we have been doing business in the past and to determine the way in which we intend to do it in the future.

As a result of this, a permanent reduction in force is called for.

Accordingly, I write to let you know there is no chance that you will be recalled to active employment at Trading Port; and, in these circumstances, I trust you will now seek to obtain suitable employment elsewhere.

If Izzy and I can help you in that effort, by giving you a reference or otherwise, we will be happy to do so. We have notified the trustee under our profit sharing and retirement plans of this change in your status. When your entitlement under these plans have been determined by the trustee, you will be contacted directly.

Sincerely,

Sam Tabachneck

(Joint)

JOINT EXHIBIT NO. 1

This statement sets forth information desired under Item Five of Subpoena Duces Tecum B-85960.

<u>Date of Employment</u>	<u>Name</u>
3-24-69	J. Allen
11-16-60	R. Bahan
6-4-73	C. Ballou ¹
12-12-67	J. Biernik
5-6-59	R. Bishop
4-8-68	T. Broderick ¹
5-23-63	J. Butler
9-12-70	J. Cafaro ²
9-14-70	H. Cone
1-7-52	C. Dambrose
3-9-73	W. Deitz
1-14-70	G. Deyss ¹
1-31-62	J. Dillenbeck ¹
6-8-68	D. Engel ¹
2-16-73	J. Fedele
4-2-46	H. Flagler
4-7-64	J. Frank
1-9-53	D. Garhartt
6-11-73	T. Garhartt
8-9-66	L. Gray
1-1-68	J. Harter
7-10-65	J. Hebert

Date of
EmploymentName

11-1-62

F. Houck

9-18-65

J. Houck¹

8-23-73

B. Hulsopple

6-14-73

D. Johnson³

4-19-53

E. Kocienski

11-13-72

K. Kvale

6-19-73

R. Leblanc

7-12-73

R. MacSilfrey

9-25-72

D. Martin

7-15-66

A. Mason

8-27-73

R. McCoy¹

8-30-73

T. E. Merwitz¹

12-13-67

R. O'Toole¹

9-21-66

G. Passino¹

3-6-72

D. Peasley¹

5-11-73

D. Pullma

7-13-71

J. Quigley

11-9-70

F. Riddick¹

5-15-69

J. Robinson

5-19-70

R. Robinson¹

7-20-72

W. Savage¹

2-15-69

M. Scanlon¹

5-10-73

A. Sharpe

<u>Date of Employment</u>	<u>Name</u>
9-25-69	J. Sim ¹
5-27-68	W. Smith
6-21-65	I. Stockwell ¹
7-16-73	R. Terry ¹
11-2-70	R. Valerio ¹
6-26-71	W. Vohnoutka

Foot Note #1

NOVEMBER

These Employees were sent my letter of ~~November~~ 1, 1973. If, as and when openings occur in our present work force, they will be offered the opportunity of re-employment.

Foot Note #2

This Employee, who also received my letter, is in a different status. He worked nights and Saturdays and we have discontinued night and Saturday work. So, as a practical matter, his employment at Trading Port, Inc. will not resume. He is employed full time elsewhere.

Foot Note #3

This employee started at Trading Port, Inc. on June 7, 1961, and worked here until July 20, 1969. He was then disabled with Tuberculosis until May 13, 1973, and returned to work on June 14, 1973.

Sam Tabachneck

Sam Tabachneck

JOINT EXHIBIT NO. 2

LIST OF EMPLOYEES WHO RETURNED TO ACTIVE EMPLOYMENT
AFTER THE SERVICE AND THE DATES OF RETURN

September 11, 1973	J. Allen
September 17, 1973	D. Pullman
September 24, 1973	D. Garhartt
September 24, 1973	J. Harter
September 24, 1973	W. Kocienoki
September 24, 1973	K. Kvale
September 25, 1973	T. Garhartt
September 25, 1973	J. Frank
September 27, 1973	D. Martin
September 27, 1973	W. Vohnoutka
September 27, 1973	W. Smith
September 27, 1973	G. Dambrose
September 28, 1973	J. Butler
October 9, 1973	R. Bishop
October 10, 1973	F. Houck
October 29, 1973	H. Cone
October 29, 1973	R. Leblanc
October 29, 1973	R. MacGillfrey
October 29, 1973	J. Robinson
October 29, 1973	A. Sharpe
November 7, 1973	B. Hulsopple
November 19, 1973	J. Biernik
December 27, 1973	D. Johnson

JOINT EXHIBIT NO. 3

W. L. BRUNELLE

Salary prior to 10/3/73	\$195.00
Salary after 10/3/73	\$205.00
Salary since 1/30/74	\$230.00

W. H. SCHMITT

Salary prior to 1/2/74	\$205.00
Salary since 1/2/74	\$230.00

W. SNYDER, JR.

Salary during 9/73	\$240.00
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D. A. AVELLINO

Salary during 9/73	\$3.60/hr.
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D. FIALKO

Salary during 9/73	\$225.00
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JOINT EXHIBIT NO. 4

NAME	HIRE DATE	ORDER OF HIRE	LAY-OFF DATE	ORDER OF LAY-OFF	RECALL DATE	ORDER OF RECALL
J. H. ALLEN	7/24/69	32				
C. A. BARNES	6/11/70	53			6/4/72	12
L. BARNES	7/13/70	46	3/10/71	11	8/16/71	6
W. BARNES	12/14/67	22				
J. BARNES	5/1/59	5				
J. BARNES	5/2/63	10				
L. BARNES	4/2/72	24				
B. A. BARNES	11/11/70	61				
J. BARNES	9/12/70	50				
J. BARNES	5/2/70	43	3/2/71	5	4/19/71	1
G. E. BARNES	9/2/69	31				
M. F. COFFEY	2/2/71	30				
L. F. COFFEY	1/2/70	39				
M. F. COFFEE	9/16/70	51				
L. F. COFFEY	3/2/70	40				
L. F. COFFEY	9/1/69	14	3/10/71	8		
G. D. COFFEY	1/1/52	2				
G. D. COFFEY	1/1/70	62	3/4/71	17	1/4/72	8
J. F. COFFEY	1/1/72	8				
M. D. COFFEY	1/13/71	64	3/12/71	2		
J. A. FISHER	2/1/65		ALL - Unemp. Comp.			
M. J. FLAGLER	4/1/66	11				
E. J. FRANKENBERG	9/10/70	47	3/29/71	17		
H. FRANK	9/11/60	6				
J. FRANK	1/10/53	3				
L. G. GIBBY	2/2/66	17				
J. HIGGINS	7/10/65	13				
J. R. HUCK JR.	11/1/62	9				
J. HUCK	7/12/65	15				
M. F. HUGHES	3/1/68	23	2/6/71	16	1/22/72	9
J. F. JACKSON	2/1/71	67	3/1/71	1		
J. D. JONES JR.	10/1/70	56				
L. S. KVALE	7/2/67	20			11/13/72	11
L. L. KINNEY	11/1/70	42				
E. V. KIRK	5/3/62	25				
J. J. LITTLE	10/2/70	57				
E. A. KOSCHICKI	1/1/73	1				
R. D. LEE	7/10/72	24	4/15/71	20	4/22/71	1
E. P. LEWIS	3/1/70	46	3/3/71	3	6/15/71	4
S. LIFSCOMB	10/1/69	34	3/9/71	7	6/1/71	3

NAME	Home DATE	ORDER OF NUMBER	DAY - OFF DATE	ORDER OFF DAY - OFF	RECEIVED DATE	CHECK
11 J. HARRON	1/15/72	16				
12 J. H. HARRY	7/2/70	45	2/10/71	21	6/1/71	2
13 J. McCullough	1/2/70	37				
14 J. F. OGDON	1/1/71	66	3/10/71	11	3/20/72	10
15 J. OTOLE	1/12/71	21				
16 J. C. PASINO	2/10/71	12				
17 J. C. PASINO	1/12/71	65	3/10/71	12		
18 J. FENNIG JR.	2/10/70	52	3/10/71	12		
19 J. L. PERKINS	1/1/70	60	3/1/71	6		
20 J. E. PRIDEMAN	1/12/71	36				
21 J. E. QUIGLEY	3/12/70	41	3/10/71	12	1/12/71	5
22 J. J. RODICK	1/1/70	59				
23 J. M. ROBINSON	3/1/70	29				
24 J. H. SCOTLON	2/15/70	22				
25 J. T. SCHUBERT	1/3/70	19				
26 J. R. SHERMAN	1/12/71	63	3/10/71	12		
27 J. W. SIM. SR.	2/5/70	57				
28 W. SMITH	5/17/70	26				
29 J. E. SUTHERLAND	2/5/70	47	3/11/71	15		
30 W. L. TRUDEAU	10/2/70	25	3/5/71	4		
31 R. M. VALENT	1/1/70	58				
32 R. H. WHITLOCK	1/10/70	28	3/10/71	9		
33 R. CAHAN	1/10/70	7				
34 J. FRANK JR.	1/1/71	11				
35 J. M. MARTIN	10/15/70	55				
36 J. FOLLMER	1/1/71	27				
37 J. STOLLWEH	4/21/70	12				
38 J. P. SHARPE	6/2/70	44				

RESPONDENT'S EXHIBIT NO. 1
1971 Layoff

<u>Layoff Date</u>	<u>Name</u>	<u>Order Of Hire</u>
2/17/71	J. E. Jackson	67
2/18/71	H. A. Dorstek	64
3/3/71	E. P. Lewis	48
3/5/71	W. E. Trudeau	35
3/8/71	D. L. Perkins	60
3/8/71	J. W. Cannon	43
3/9/71	S. Lipscomb	34
3/10/71	L. Ballou	46
3/10/71	L. J. Cosgrave	14
3/10/71	R. H. Whitlock	38
3/10/71	H. R. Sherman	63
3/10/71	J. E. Quigley	41
3/10/71	G. T. Passino	65
3/10/71	M. F. Ogara	66
3/11/71	J. E. Southerland	47
3/12/71	N. A. Hughes	23
3/24/71	G. E. Deyss	62
3/26/71	I. C. Fennick, Jr.	52
3/29/71	E. J. Frankenbeck	49
4/15/71	R. A. LeBlanc	54
4/16/71	R. W. McCoy	45

RESPONDENT'S EXHIBIT NO. 2

Gentlemen:

I stand here before you with my brother, Izzy, (who incidentally celebrated his 50th year with TR Purt 1923 - 1973), with a little bit of a heavy heart (aside from the fact that my physical condition is not up to par).

As you all probably know Mr. Robelloto and Mr. J. Dillenbeck met with my brother, Izzy, at about noon x time to discuss the possibilities of having Local 294 - Teamsters Union as your representative designate - Nothing wrong with that WHAT disturbs me no end is why after all these years did you people feel you needed some one beside yourself to represent you. Again this is not uncommon and very legal.

Tonight you are meeting to determine whether or not to give the Company its legal right to have a secret ballot election, where each man can determine in all privacy and secrecy to express his honest feeling. I believe this is not only an American tradition but the American way.

This I and my brother promise you. Publically before this assemblage - that if ~~ix~~ the vote is for the union that is what it is going to be - if it is the other way - I can only tell you from past experience, which many of you partook of - no vendettas - no animosities - no nothing.

I now come to the main theme and thought in all negotiations of this sort - Tempers run short - name calling rears its ugly head and many other ~~gi~~ things too numerous to mention appear.

Regardless if there is or isn't a union, we as management, still have a right to elect how we do business to whom we want as customers and the customer have the same right. We have in the past, assumed a great deal of unprofitable business which we should not have in the first place, and the time has come to eliminate them.

I ask for this much consideration in your deliberation tonight - PLEASE DO NOT LET ANGER AND VENGEANCE take precedence over cool, sensible thinking.

Not perhaps for me and mine, but I can give you a list of names as long as your arm of people who will suffer every financial reverse through no cause of their own.

Luke, ^{SMITTY} ~~Saritt~~, Lil Kitcher, Helen, Marge, Dora - and don't forget a few others with an excess of 20 or 25 years that you don't see here - Bob Farigan, Timmy, Bob Nunziato, Old Blanch, Hazel, etc., etc.

In closing I ~~repeate~~ repeat, Let's do this the honest, American way by a secret ballot; and may I add this thought - the No. 1 man that dictates who will work and how much, he will get, is our customers - We are not the only wholesaler in this area and if any one here thinks the other 30 wouldn't welcome a close down of ~~2x2x~~ Bi-Lo - forget it.

If we lose our customers, YOU and I have lost all. He is the final judge of both our destinies.

Gentlemen: - Thanks a million for listening and may cool heads prevail.

RESPONDENT'S EXHIBIT NO. 3 7)

Today, at about noon, my brother, Izzy, and my son were visited by Mr. Robilotto of Teamsters Local 294. Jim Dillenbeck was with him.

Whether you call it a "request" or a "demand", Izzy was asked to recognize Local 294 as representative of our employees based upon the claim that a majority of our employees had signed pledge cards.

MY BROTHER AND I ARE LAW ABIDING PEOPLE AND WE BELIEVE IN THE AMERICAN WAY. EACH OF YOU IS ENTITLED TO VOTE YOUR CHOICE FOR OR AGAINST A UNION, IN A SECRET BALLOT ELECTION CONDUCTED BY THE UNITED STATES GOVERNMENT.

We know and the government knows that cards are not the same as votes. The government counts votes - not cards!

In a secret ballot United States Government-supervised election, each of you can vote your choice with nobody knowing how you voted or using any coercion: not the union, not a fellow employee, and not us.

You are entitled to your right to vote and you are entitled to know all the facts before you make up your mind and vote.

If Local 294 hopes to stampede our employees into a strike so that we will recognize them without an election, then Local 294 can forget it.

I repeat what my brother Izzy said: We believe the peaceful, orderly, democratic and American way to decide this is by a secret ballot election. We will accept the results of that election.

My brother told Mr. Robilotto that he should file a petition and request an election. That is what he should do.

To show that we are in good faith, I tell you now that unless Local 294 files a petition this very week, Bi-Lo will file a petition Monday morning and ask the NLRB to hold an election here so that each of you can vote your choice after considering all the facts.

That is the only way that makes sense - the American way.

If Local 294 wants you to do it any other way, it will hurt you and it will hurt us; it won't hurt Local 294, but it will be a sure way to help our competitors by sending our customers elsewhere. In the long run, that has to hurt you as well as us.

Gentlemen: Thanks a million for listening. Do what you think makes sense and may cool heads prevail.

I know there may be questions and I don't have all the answers, but I will answer all your questions between now and the election. Thank you.

RESPONDENT'S EXHIBIT NO. 4

CTL

COLONIE TRUCK LEASING CO., INC.

AFFILIATE OF THE NATIONAL TRUCK LEASING SYSTEM

August 31, 1973

Trading Port Inc.
Manning Blvd & Prospect Ave.
Albany, New York

Attn: Mr. Sam Tabachneck

Dear Mr. Tabachneck:

The recent increase in our contractual price for fuel makes it necessary at this time to increase your vehicle mileage rates as follows according to the terms of our lease agreement:

Tractors: from .135¢/mile to .155¢/mile

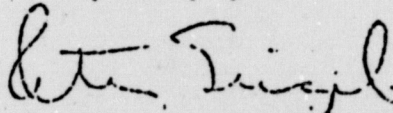
Vehicles #'s 321-322, 323, 324

Straight Trucks: from .122¢/mile to .137¢/mile

Vehicles #'s 325, 326

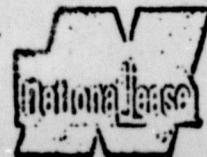
We regret this increase, but in the light of current events, must adjust your vehicle mileage rates to reflect our increased cost of obtaining fuel. This increase shall take effect with your September 6, 1973 billing.

Very truly yours



Peter Siegel, Manager
Colonie Truck Leasing Co., Inc.

PS/a



RESPONDENT'S EXHIBIT NO. 5

Memo FROM: Trading Port, Inc. — Bi-Lo Cutrate Wholesale
NO. MANNING BLVD. & PROSPECT AVE. ALBANY, N. Y. 12206
TELEPHONE: 518-489-2501

TO:

Colonie Truck Leasing Co. Inc.
1904 Central Avenue
Albany, N. Y. 12206

DATE: September 10, 1973

SUBJECT:

FOLD HERE

Gentlemen:

Please be advised that we are exercising our cancellation
clause as per our contract with you.

Yours very truly

Sam Tabachneck
Sam Tabachneck

TRADING PORT INC.

by _____

IN NO SET
CROMWELL 2 PL

Cromwell Business Forms, Albany, N. Y. 12201

Memo-Set

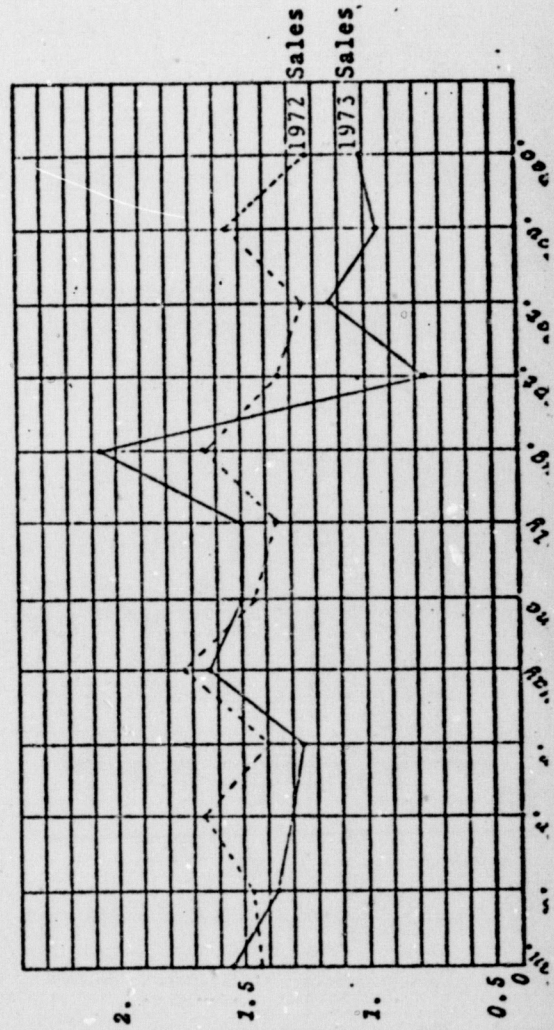
RESPONDENT'S EXHIBIT NO. 6

SALES ANALYSIS

Month	Whse Sales (1973) In \$	Whse Sales In Cc	# of Cc Sold to C & G	# of Cc Sold to Others	Avg. Sale Price Per Cc (1973)	Whse # of Emp. - Avg #	Avg. # Cc Sold per Warehouse	Whse Sales In \$ for 1972	1973 Sales Over or (Under) (1 - 8)
Jan.	\$ 1,557,284.24	230,397	9,955	220,442	\$7.064	33	6,982	\$ 1,441,451.50	\$115,832.74
Feb.	1,379,493.78	214,980	8,738	206,242	6.689	37	5,810	1,465,491.05	(85,997.27)
March	1,342,191.28	206,585	9,435	197,150	6.808	39	5,297	1,786,902.07	(444,710.79)
April	1,312,831.70	199,752	9,422	190,330	6.898	37	5,399	1,398,768.40	(85,936.70)
May	1,664,546.48	256,539	10,516	246,023	6.765	36	7,126	1,723,212.10	(58,865.62)
June	1,495,947.83	227,176	8,962	218,214	6.855	38	5,978	1,440,380.05	55,567.78
July	1,496,275.90	229,267	8,519	220,748	6.778	38	6,033	1,355,260.93	141,014.97
August	2,066,237.46	243,346	8,320	235,026	8.792	39	6,240	1,609,576.16	396,661.30
Sept.	786,013.35	125,419	7,163	118,256	6.647	31	4,046	1,338,775.96	(552,762.61)
Oct.	1,133,728.52	136,924	8,588	128,336	8.834	21	6,520	1,286,843.54	(153,115.02)
Nov.	943,272.53	134,653	9,029	125,624	7.509	26	5,179	1,572,521.40	(629,248.87)
Dec.	1,004,189.62	144,255	8,721	135,534	7.409	26	5,548	1,259,058.94	(254,869.32)
	<u>\$16,181,812.69</u>							<u>\$17,738,242.10</u>	<u>(\$1,556,429.41)</u>
Jan. ('74)	\$1,335,392.91	181,864	11,149	170,715	7.822	27	6,736	\$ 1,557,284.24	(\$ 221,891.33)
Feb. ('74)	1,008,893.52	146,605	8,706	137,899	7.316	27	5,430	\$ 1,379,493.78	(\$ 370,600.26)

SALES CHART

Million of \$

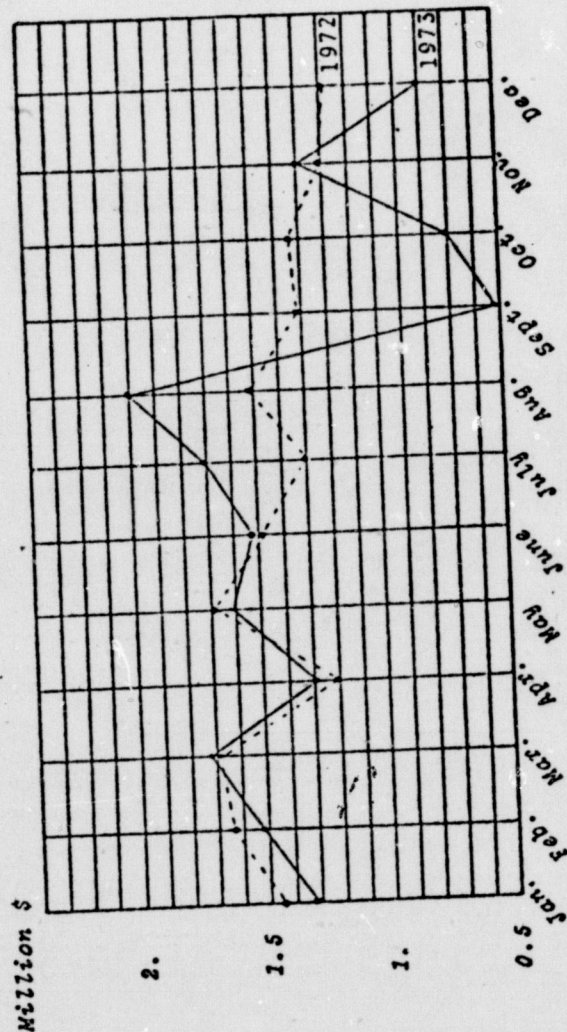


Rec #6

PURCHASES ANALYSIS

1973 Month	Whse Purch. in \$ For 1973	Whse Purch. in \$ For 1973	Avg. Purch. Price Per Cb (1-2)	# of Emp. (Avg.)	# of Cases Purch. Per Whse. Emp. (2+6)	Whse Purch. in \$ For 1972	1973 Purch. Over or (Under)
Jan.	1,393,203.42	206,857	\$6.735	33	6,268	1,495,373.78	(102,170.36)
Feb.	1,531,167.10	219,577	6.973	37	5,935	1,683,098.13	(151,931.03)
March	1,729,352.57	245,007	7.058	39	6,282	1,711,273.44	18,079.13
April	1,316,382.74	197,216	6.675	37	5,330	1,236,837.26	79,545.48
May	1,604,660.29	238,769	6.721	36	6,632	1,712,515.40	(107,855.11)
June	1,549,311.63	224,003	6.916	38	5,895	1,538,669.93	357,395.84
July	1,718,236.70	241,819	7.105	38	6,364	1,360,840.86	502,470.32
Aug.	2,082,847.82	285,367	7.299	39	7,317	1,580,377.50	(804,751.08)
Sept.	578,233.41	59,718	9.683	31	1,926	1,382,984.49	(689,687.97)
Oct.	704,515.46	95,800	7.354	21	4,562	1,394,203.43	59,427.57
Nov.	1,349,206.62	168,036	3.029	26	6,463	1,289,779.05	(382,541.50)
Dec.	880,456.97	119,252	7.383	26	4,587	1,262,998.47	
Jan. ('74)	1,489,448.30	164,142	9.074	27	6,079	1,393,203.42	96,245
Feb. ('74)	1,315,115.99	170,743	7.702	27	6,324	1,531,167.10	(216,051.11)

PURCHASES CHART



OPERATIONAL COST ANALYSIS

	1	2	3	4	5	6	7	8	9	10	11
	P/R - Whsec.	Frg. Ben. (20% of 1)	P/R Burden	Total P/R Cost (1+2+3)	Whsec - # of Employee - Avg #	Avg. P/R Cost per Whsec. Employee (4÷5)	# of Cts Sold per Warehouse Employee	# of Cts Pur. per Employee	Total Cts Handled per (7+8) Emp.	Avg. cost/case handl. per (6÷9)	Whsec Sales 1973
1973											
Jan.	\$ 31,573	\$ 6,315	\$ 2,030	\$ 39,918	33	\$1,210	6,982	6,268	13,250	\$.091	\$1,557,284
Feb.	26,346	5,269	2,563	34,178	37	924	5,810	5,935	11,745	.079	1,379,494
March	25,197	5,039	1,998	32,234	39	827	5,297	6,282	11,579	.071	1,342,191
April	24,563	4,913	1,942	31,418	37	849	5,399	5,330	10,729	.079	1,312,832
May	30,769	6,154	2,354	39,277	36	1,091	7,126	6,632	13,758	.079	1,664,346
June	27,453	5,492	1,844	34,794	38	916	5,978	5,895	11,873	.077	1,495,948
July	28,087	5,617	1,784	35,488	38	934	6,033	6,364	12,397	.075	1,496,276
Aug.	37,599	7,920	2,394	47,913	39	1,229	6,240	7,317	13,557	.091	2,066,237
Sept.	15,891	3,178	1,007	20,076	31	648	4,046	1,926	5,972	.109	786,013
Oct.	19,431	3,886	1,110	24,427	21	1,163	6,520	4,562	11,082	.105	1,133,729
Nov.	19,369	3,874	1,126	24,369	26	937	5,179	6,463	11,642	.080	943,273
Dec.	18,749	3,750	1,031	23,530	26	905	5,548	4,587	10,135	.059	1,004,190
TOTAL	\$505,032	\$61,407	\$21,183	\$587,622			70,158	67,561	137,719		
Jan. ('74)	\$23,712	\$ 4,742	\$ 1,506	\$ 29,960	27	\$1,110	6,736	6,079	12,815	\$.087	\$1,330,393
Feb. ('74)	18,938	3,788	2,354	25,080	27	929	5,430	6,324	11,754	.079	1,008,894

* Includes Taxes, S.S.,
State Unemployment Ins.,
Fed. Unemployment.

RESPONDENT'S EXHIBIT NO. 7

CUSTOMER ANALYSIS

Trading Port's customers for 1973 are shown below. The following code represents entries in the tables:

COLUMN

- A (1) = Deliveries by Trading Port
 (2) = Pick-up by customer
- B (3) = Pre-strike action
 (4) = Post-strike action
- C (5) = Small number of cases per order (less than 100)
 (6) = Large inventory required for customer
 (7) = Multiple-line items required for customer
 (i.e., Bordens, Sunshine, Breakstone, Oscar Meyer)
 (8) = Intermittent ordering by customer
- D (9) = Poor risk customer
 (10) = Slow-paying customer
- E (11) = Customer went bankrupt
 (12) = Customer went out of business
 (13) = Total loss/strike casualty
 (14) = Partial loss/strike casualty

Remarks 1 Good customer
 2 Average customer
 3 Marginal customer

Res A # 7

CUSTOMER	PRE-STRIKE A	PRE-STRIKE B	C	D	E	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS
								PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES	
Albany Public	2	2	4	6	1	14	8,841	2,000	2010/1356	1,683	2,000	2,189/1,538	1,864	Inventory dump in Oct.: Volume sharply reduced because TP stopped handling specialty items (Borden's, Breakstones, etc.)
Arrow Cash	1	2	-	-	-	-	706	725	713/799	756	725	857/713	785	No change (N/C) - good customer.
Ashley's	2	2	-	5	-	-	347	219	235/247	241	219	210/145	178	N/C - old reliable customer
Aversano	2	2	-	8	-	-	262	422	215/258	237	422	0/219	110	N/C - marginal - erratic.
Barna	1	2	-	-	-	-	826	837	976/854	915	837	933/1018	976	N/C - good customer.
Berlin Cash	1	2	-	-	-	-	599	623	567/550	559	623	905/675	790	N/C - average customer
Bryants	2	2	4	-	-	14	7,905	14,000	12,957/12,446	12,702	14,000	15,747/12,116	13,932	Started using another supplies/ reduced volume.
Cairo	2	2	-	5	-	-	0	67	0/94	47	67	50/0	25	N/C - Marginal - "hit and run".
Capital Food	2	2	-	-	-	-	221	289	316/286	301	289	380/282	331	Reliable - but small volume.
Carnavalle's	2	2	-	-	-	-	6,631	9,765	6,980/7,833	7,407	9,765	10,347/8,248	9,298	N/C - "Unique method of delivery: we load their box & take it to them approx. 220 yds. from where they unload it."
Carskill Food-A-Rama	1	2	4	-	-	14	647	647	451/402	427	779	615/448	532	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.

CUSTOMER	PRE-STRIKE				POST-STRIKE				ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)		PHASE B (January-December 1974)		REMARKS	
	A	B	C	D	E	PRE-STRIKE B MO. AVG. (JAN-AUG)	ACTUAL CASE SALES NOVEMBER/DECEMBER	PROJECTED MAX. AVG. MO. CASE SALES		ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/FEBRUARY	ACTUAL AVERAGE MO. CASE SALES		
Central Markets	1	2	4	-	-	14	664	463	463	571/637	604	664	604/633	619	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.
Circle W	1	2	4	5	-	14	445	296	296	445/0	223	445	537/240	389	Using another supplier after strike; reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.
Clifton Park Convenient	1	2	4	-	10	14	625	0	200	190/518	354	400	512/358	435	Reduction due to no deliveries & customer losing business to competitors. Phase A = appx. 1/3 pre-strike avg. Phase B = appx. 2/3 pre-strike avg.
Colony Star	1	-	3	-	-	-	(503 for 3 months) (Left in March)	--	--	--	--	--	--	--	Left in March; mutually unhappy.
Convenient Food	1	2	-	-	10	14	1,006	0	350	132/525	329	700	370/319	345	Reduction due to no deliveries & customer losing business to competitors. Phase A = appx. 1/3 pre-strike avg. Phase B = appx. 2/3 pre-strike avg.
Country Dollar Fairhaven	1	2	-	-	-	-	3,960	3,770	3,960	3,198/2,291	2,745	3,960	3,597/3,277	3,437	N/C - good customer.
Country Dollar Fort Edward	1	2	-	-	-	-	1,911	1,353	1,911	1,468/1,635	1,552	1,911	1,935/1,726	1,831	N/C - good customer.
Country Dollar Waterford	1	2	-	-	-	-	8,399	5,783	8,399	6,243/7,863	7,053	8,399	7,384/6,421	6,903	N/C - good customer.
Caitech Shopwell	1	-	46,7	10	13		2,039	--	--	--	--	--	--	--	Total loss - no deliveries.
Davis, Al	1	2	-	-	-	-	2,995	1,728	2,995	2,623/3,105	2,864	2,995	3,590/2,860	3,225	N/C - good customer.
J.M. Celson	1	2	4	8	-	14	941	333	333	458/464	461	941	794/658	726	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.

CUSTOMER	PRE-STRIKE 1	PRE-STRIKE 2	A	B	C	D	E	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS
										PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES	
Derossi Star	1	-	4	-	-	-	13	298	--	--	--	--	--	--	--	Total loss - no deliveries. Was very sporadic in ordering.
Dexter Davis Trading Post	1	1	-	-	-	-	-	2,433	2,261	2,433	2,449/2,614	2,532	2,433	3,099/2,047	2,573	N/C - good customer.
Dixx	1	-	4	5	-	-	13	(329 cases 2 months)	433	--	--	--	--	--	--	1 Total loss - no deliveries; bad customer - part of Shoprite's drug dept.
Dot Stores	2	2	-	5	-	-	-	977	1,399	977	598/767	683	977	918/1,078	998	N/C - marginal but pays high 5¢ upcharge to offset small drug chain orders.
Doughney Bros.	1	2	-	-	-	-	-	1,155	1,273	1,155	1,386/1,061	1,224	1,155	2,207/1,510	1,859	3 Good customer.
Dunn General Store	1	-	4	5	10	13	-	247	--	--	--	--	--	--	--	1 Total loss - no deliveries (Vermont).
Economical	1	2	-	-	-	-	-	3,997	2,549	3,997	3,617/3,475	3,546	3,997	4,674/4,564	4,619	N/C - good customer.
Esquire	2	2	-	-	-	-	-	441	595	441	309/354	332	441	502/430	466	1 N/C - marginal customer.
Fairhaven Outlet	1	2	-	-	-	-	-	222	114	222	167/100	134	222	157/79	118	3 N/C - (part of Country Dollar). - but marginal customer.
Fairway Star	1	2	4	-	-	-	14	2,006	2,297	2,006	1,999/1,162	1,581	2,006	1,925/1,246	1,586	3 N/C - his business seems to be dropping.
Farina Convenient	1	2	4	-	-	-	14	568	0	200	19/412	216	400	626/433	530	2 Reduction due to no deliveries & customer losing business to competi- tors. Phase A = appx. 1/3 pre-strike avg. Phase B = appx. 2/3 pre-strike avg.

CUSTOMER	NO. 1	NO. 2	NO. 3	NO. 4	NO. 5	NO. 6	NO. 7	NO. 8	NO. 9	NO. 10	NO. 11	NO. 12	PRE-STRIKE 9 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS	
															PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES		
Farmer-in- The-Dell	2	-	3	5	9	12	10						1,166 (Left in March)	--	--	--	--	--	--	--	Dropped in March; Represented avg. of 25 cases/wk/store for 12 stores.	
Food Circus	1	2	4	-	-	14							4,578	3,071	3,663/4,471	4,067	4,578	4,680/3,972	4,326	1	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.	
Ford Convenient	1	2	4	-	10	14							722	0	250	274/622	448	500	860/540	700	2	Reduction due to no deliveries; 1 customer losing business to competi- tors. Phase A = approx. 1/3 pre-strike avg. Phase B = approx. 2/3 pre-strike avg.
Frankfurt Cut-Rate	1	-	3	-	-	12							1,960 (Left in April)	--	--	--	--	--	--	--	Good customer; sold out.	
Gabriel State Street	1	-	4	5	6	13							496	--	--	--	--	--	--	--	Total loss - no deliveries; We were secondary supplier to start with.	
Gabriel's	1	-	4	-	9	13							1,744	987	--	--	--	--	--	--	No dropped because they didn't pay bills & wrote bad checks.	
Governor Clinton	1	2	4	-	-	14							4,271	552	552	601/455	528	4,271	2,154/1,782	1,968	1	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.
GEX	1	2	4	-	10	14							14,000	7,561	7,561	8,420/9,389	9,005	14,000	11,002/12,134	11,568	1	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.
Gineburg	2	2	-	5	10	-							295	318	295	336/225	281	295	448/173	311	3	N/C - marginal, erratic customer.
Globe	2	2	-	5	-	-							185	152	185	109/119	114	185	192/150	171	2	N/C - Specialty - we sell recouped damages & a few other items.
Gohl	1	2	-	-	-	-							1,047	298	1,047	1,021/914	968	1,047	783/772	778	1	N/C - good customer.

CUSTOMER	PRE-STRIKE				PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS
	A	B	C	D	E		PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES	
Gregory Lennox	2	2	-	5	10	-	357	305/323	314	357	314/304	309	N/C - marginal customer.
Greulichs	1	2	-	-	-	-	2,279	1,804/2,128	1,966	2,279	2,093/1,757	1,925	N/C - good customer.
Guiderland Convenient	1	2	4	-	9	14	837	271/532	402	600	781/703	742	Reduction due to no deliveries; customer losing business to competi- tors. Phase A = appx. 1/3 pre-strike avg. Phase B = appx. 2/3 pre-strike avg.
Guistino	1	2	-	5	8	-	282	568/106	57	282	253/343	298	N/C - Marginal customer.
Grand Cash	2	2	-	-	10	-	10,111	8,399/10,568	9,484	10,000	11,574/8,903	10,239	Formerly slow paying; now consider- ably improved; unsure in Oct. of readjustment to payment schedule; max. expected in Phase B was pre-strike level.
Half Moon	1	2	-	-	-	-	321	264/486	375	321	392/279	336	N/C - average customer.
Harjes Economy	1	-	-	-	12	(Left in May)	628	--	--	--	--	--	Out of business in 6/73.
Hersonville Frozen Food	1	2	4	-	-	14	1,186	0/637	319	1,186	1,009/634	822	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.
Herkimer	1	-	3	-	-	12	5,927 (Left in April)	--	--	--	--	--	Sold out in April.
IGA Plaza Greenbush	1	2	-	-	9	10	656	1,177/1,266	1,222	656	1,528/60	794	N/C - still owe TP money; all sales now for cash only.
Jake's	2	2	-	-	-	-	718	674/748	711	718	785/699	742	N/C - good customer; many years to- gether.

CUSTOMER	PRE-STRIKE		POST-STRIKE		A	B	C	D	E	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)				PHASE B (January-December 1974)				REMARKS
														PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES	
Jerry & Joe's	2	2	-	8	-	-	-	-	-	306	110	306	255/0	128	306	198/166	182	N/C - average customer.	2	
Joe's Food	1	2	-	-	-	-	-	-	-	310	488	310	779/0	390	310	1,136/673	905	N/C - average customer.	2	
Kantrowitz	1	2	-	-	9, 10	-	-	-	-	442	166	442	360/472	416	442	290/297	294	N/C - marginal, slow pay.	3	
Kelders	2	2	-	8	10	-	-	-	-	246	212	246	279/227	253	246	302/299	301	N/C - marginal customer.	3	
Kretchmar (3)	1	-	4	5,7	-	13, 14	-	-	-	54	--	--	--	--	--	--	--	Eliminated their major line need (Oscar-Meyer); too small a customer; they left us.	1	
Lernes Store	1	2	4	-	-	-	-	-	-	1,026	0	0	0/362	181	1,026	614/230	422	Reduction - no deliveries. Used Oct. sales for Phase A; hope to regain all lost business; hence use pre-strike avg for Phase B; we are their secondary supplier.	2	
Lew's Market (Amsterdam)	2	2	-	-	-	-	-	-	-	4,195	4,342	4,195	2,960/5,553	4,257	4,195	5,309/4,097	4,703	N/C - good customer.	1	
Lexington Market	2	2	-	5	-	-	-	-	-	471	297	471	459/205	332	471	343/301	322	N/C - average customer.	2	
Liberty Coal & Oil Co.	2	2	-	8	-	-	-	-	-	188	450	188	0/384	192	188	295/242	269	N/C - marginal; too erratic.	2	
Market Basket	1	2	4	8	-	14	-	-	-	177	84	84	0/166	83	177	121/1,001	561	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.	3	
Martin's Convenient	1	2	4	-	10	14	-	-	-	844	0	300	332/666	499	600	784/487	634	Reduction due to no deliveries & customer losing business to competi- tors. Phase A = approx. 1/3 pre-strike avg. Phase B = approx. 2/3 pre-strike avg.	2	

CUSTOMER	PRE-STRIKE A	POST-STRIKE B	C	D	E	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS
								PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES	
Narvedel	1 2	-	5	-	-	159	180	159	152/172	162	159	176/139	158	N/C - Marginal; small orders. 3
Nax & Lew's Delicatessen	1 2	-	-	-	-	218	317	218	191/173	182	218	326/22	174	N/C - Marginal; intermittent. 3
Waybrook IGA	1 2	4	6	-	14	1,866	810	810	828/701	765	1,866	1,434/821	1,128	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B; TP is secondary source. 3
Lew Miller	2	-	-	-	12	183 (Left in January)	--	--	--	--	--	--	--	Omit business in January. 3
Miller WSL	2 2	-	-	-	-	6,998	5,467	6,998	5,588/6,080	5,834	6,998	8,000/5,870	6,935	N/C - good customer. 1
Miltonburger	1 2	4	-	-	14	743	609	609	516/286	401	743	770/514	642	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B. 2
Mohegan Food & Vegetable	1 2	-	-	-	-	274	386	274	506/221	364	274	370/682	526	N/C - average customer. 2
Murphy Convenient	-	2	-	-	10	(Started in November)	0	0	58/269	164	0	404/298	351	Started in November. 2
Myzal	1 2	4	-	-	14	1,188	520	520	174/702	438	1,188	1,594/945	1,270	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B. 2
New Lebanon	1 2	-	-	-	-	1,788	1,618	1,788	1,379/1,455	1,417	1,788	1,997/1,493	1,745	N/C - good customer. 1
Normanskill	2	-	4	5	-	2,704	--	--	--	--	--	--	--	Lost 20 of their stores to another supplier; TP didn't want them be- cause averaged 34 cases/week/store. 1

CUSTOMER	PRE-STRIKE A	POST-STRIKE B	C	D	E	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS
								PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES	
Oliver	2 2	-	-	-	-	754	611	754	556/770	663	754	777/659	718	N/C - average customer. 2
O. O. Ware General	1 -	4	-	-	13	336	--	--	--	--	--	--	--	Total loss - no deliveries.
Oneida	2 2	4	-	9, 11, 10 12	7, 341	823	823	823	1,443/590	1,017	0	0/0	--	In process of going bankrupt at time of strike.
Parkside	1 2	-	-	-	-	998	984	998	945/928	937	998	1,204/938	1,071	N/C - average customer. 2
Pat's Supermarket	1 -	4	5, 7 9, 10	13	213	--	--	--	--	--	--	--	--	TP dropped them in August because they were poor paying customer.
Pete's Supermarket	1 2	4	8	-	14	382	142	142	310/0	159	382	247/397	322	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B.
Pioneer	1 2	-	-	-	-	1,775	749	1,775	1,242/1,253	1,248	1,775	2,633/2,325	2,479	N/C - good customer. 1
Queensbury	2 2	-	-	-	-	680	536	680	510/568	539	680	747/574	661	N/C - good customer. 1
Ravida's	1 2	-	5	-	-	356	273	356	377/457	417	356	325/395	360	N/C - marginal. 3
Rocky's IGA	1 2	4	-	-	14	417	177	177	91/20	56	417	151/29	90	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B; TP is secondary supplier. 2
Rosendale	1 2	4	-	-	14	4,930	2,587	2,587	1,596/1,368	1,482	4,930	1,562/1,445	1,504	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B. 2

CUSTOMER	PRE-STRIKE A	PRE-STRIKE B	PRE-STRIKE C	PRE-STRIKE D	PRE-STRIKE E	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS
								PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER	ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES	
Potterdam Discount	1 - 4	- 10	13			1,191	--	--	--	--	--	--	--	TP dropped this prior paying customer in September.
S&L	1 2	- 5	-			380	313	380	565/403	484	380	346/473	410	N/C - average customer.
Salem	1 - 4	- 13				764	--	--	--	--	--	--	--	Total loss - no deliveries (Vermont).
Sam's Supermarket	1 2	4	8	- 14		502	0	0	0/357	179	502	393/179	286	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B; using other supplier.
Schechter Bros.	1 - 4	- 13				1,184	--	--	--	--	--	--	--	Total loss - no deliveries.
Schnectady Discount	1 2	4	- 14			1,867	1,302	1,302	731/1,524	1,128	1,302	1,038/1,109	1,074	Switched some business to Springfield Sugar. Should level off at October levels.
Scotia Discount	1 2	4	- 14			5,743	3,357	3,357	3,477/2,847	3,162	3,357	3,454/4,144	3,799	Switched some business to Springfield Sugar. Should level off at October levels.
Shelly's Market	1 - 4	8	- 13			695	--	--	--	--	--	--	--	Total loss - no deliveries; went with Bi-Rite; orders very sporadic.
Shop-Rite	1 2	4	8,710	14		16,568	1,628	1,628	3,637/3,164	3,401	5,000	5,572/4,660	5,116	TP now servicing only 5/14 stores; Phase A = Oct. levels; Max. Phase B projected = appx. 5/14 of prestrike avg.
Skyview	1 2	- 8	-			599	736	599	0/457	229	599	915/378	647	N/C - TP is secondary supplier.
Slim's Market	1 - 3	- 9	-			1,331	--	--	--	--	--	--	--	Poor risk; left before strike due to financial problems.

CUSTOMER	PRE-STRIKE		POST-STRIKE		A	B	C	D	E	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PHASE A (November-December 1973)			PHASE B (January-December 1974)			REMARKS
	1	2	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER								ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES			
Southern Fruit	2	2	-	-	-	-	-	-	-	1,040	1,049	1,040	968/950	959	1,040	1,621/1,096	1,359	N/C - good customer. 1
Star Plaza	1	2	4	-	-	-	-	-	14	1,592	1,095	1,095	1,058/1,097	1,078	1,592	2,094/1,027	1,561	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B; TP is secondary supplier. 2
Steurtz	1	2	-	8	-	-	-	-	-	536	355	536	573/440	507	536	714/524	619	N/C - marginal customer. 3
Stewart's (18 stores)	2	2	-	-	-	-	-	-	10	2,164	2,423	2,164	2,047/2,918	2,483	2,164	2,581/2,151	2,366	N/C - orders once low; corrected after strike. 2
Sulli's Market	1	2	4	-	-	-	-	-	14	1,504	690	690	816/705	761	1,504	1,272/1,126	1,199	Reduction - no deliveries. Used October sales for Phase A; hope to regain all lost business; hence use pre-strike avg. for Phase B; TP is secondary supplier. 1
Syke's	1	2	-	-	-	-	-	-	-	895	365	895	1,224/1,508	1,366	895	1,211/778	995	N/C - good customer. 1
Tancredi's	1	-	4	-	-	-	-	-	13	1,519	--	--	--	--	--	--	--	Total loss - no deliveries.
Terry's	1	-	4	5	-	-	-	-	13	491	258	0	0/97	49	0	--	--	Total loss - no deliveries.
Third Street Cash	2	2	-	-	-	-	-	-	-	497	586	497	520/494	507	497	508/450	479	N/C - average customer. 2
Thrift Market	2	2	4	8	-	-	-	-	13	57	--	--	--	--	--	--	--	Left in Sept.; very erratic.
Trading Post (Leon's)	1	1	-	-	-	-	-	-	-	1,693	1,492	1,693	1,696/1,519	1,608	1,693	1,834/1,442	1,638	N/C - good customer. 1

CUSTOMER	PHASE A (November-December 1973)				PHASE B (January-December 1974)				REMARKS				
	PRE-STRIKE A	POST-STRIKE B	C	D	PRE-STRIKE 8 MO. AVG. (JAN-AUG)	ACTUAL CASE SALES OCTOBER	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL SALES NOVEMBER/ DECEMBER		ACTUAL AVERAGE MO. CASE SALES	PROJECTED MAX. AVG. MO. CASE SALES	ACTUAL CASE SALES JANUARY/ FEBRUARY	ACTUAL AVERAGE MO. CASE SALES
Trading Port New Scotland	2 2	-	-	-	4,401	3,688	4,401	4,176/3,669	3,923	4,401	5,324/3,651	4,488	N/C - good customer.
Tarranto Convenient	1 2	4	-	10	755	0	250	243/824	534	500	723/574	649	Reduction due to no deliveries & customer losing business to competitors. Phase A = appx. 1/3 pre-str. avg. Phase B = appx. 2/3 pre-str. avg.
Van Allen Farms	2 2	-	5	-	223	142	223	212/113	163	223	298/169	234	N/C - marginal customer.
Vellotti	1 2	-	-	-	409	314	409	295/399	347	409	500/390	445	N/C - average customer.
Village Pantry	1 -	3	-	12	1,434	--	--	--	--	--	--	--	Sold out to Normanskill in August.
Waldtraum's	1 -	4	5	10	327	--	--	--	--	--	--	--	Total loss - no deliveries.
West End	1 2	4	5	13	640	--	--	--	--	--	--	--	Total loss - no deliveries.
William's Little General	2 2	-	-	-	238	355	238	294/226	260	238	497/203	350	N/C - Bought out 2 Green's Little General; average steady customer.
Yaiser's	1 -	3	-	9	1,528	--	--	--	--	--	--	--	Went bankrupt before strike & left TP holding IOU's.
Zane's	1 2	-	8	-	426	292	426	472/318	395	426	501/264	383	N/C - marginal/erratic.
Miscel- laneous (includes C&Q)					7,606*	22,295*	12,000	10,577/11,081	10,829	12,000	13,847/9,992	11,920	N/C - includes TP (Central & Quail).

* (represents difference between total Pre-Strike 8 mo. average and total actual Pre-Strike 8 mo. average)

RESPONDENT'S EXHIBIT NO. 8

	Proj. Max. Avg. Monthly Case Sales	Actual Monthly Case Sales	Proj. Max. Avg. Monthly Case Purch.	Actual Monthly Case Purch.	Projected Total Max. Cs. Handled	Actual Total Cases Handled	Projected Production Levels (Cs/man no.)	Actual Production Levels (Cs/man no.)	Proj. Max. # of Whsmn	Actual # of Whse. Men
PHASE A										
November	140,000	135,000	175,000	168,000	315,000	303,000	12,000	11,700	26	26
December	140,000	144,000	175,000	*120,000	315,000	264,000	12,000	10,200	26	26
PHASE B										
January	175,000	182,000	175,000	164,000	350,000	346,000	13,000	12,800	27	27
February (short month)	175,000	147,000	175,000	170,000	350,000	317,000	13,000	11,700	27	27
Avg. (Jan./ Feb.)	175,000	165,000	175,000	167,000	350,000	332,000	13,000	12,300	27	27

* low because of trucking strike.

NATIONAL LABOR RELATIONS BOARD
 389-3853
 Docket No. 389-3853 OFFICIAL EXHIBIT NO. 8

Disposition { Identify ☒
 Receive ☒
 Reject ☐

In the matter of Trucking Port
 Date 7/1/77 Witness ED Reporter ED
 No. Pages

R-SP. # 8

RESPONDENT'S EXHIBIT NO. 9

DELIVERY ANALYSIS

	<u>Frgt. Cost & O/H</u>	<u>P/R Taxes</u>	<u>Gas</u>	<u>Insurance License Thruway</u>	<u>Total Cost</u>	<u>Delivery Income</u>	<u>Net Loss</u>
Jan.	\$ 14,207	\$ 457	\$ 235		\$ 14,899	\$ 13,703	\$ 1,196
Feb.	13,704	538	222		14,464	14,200	264
March	14,756	493	193		15,442	13,572	1,870
April	14,442	476	224		15,142	12,615	2,527
May	17,423	551	226		18,200	14,969	3,231
June	15,112	415	218	ON	15,745	14,414	1,331
July	15,659	398	329	ANNUAL	16,386	14,611	1,775
August	16,408	534	361	BASIS	17,303	14,105	3,198
Sept.	N.A.	196	-		196	-	196
October	-	-	-		-	-	-
November	-	-	-		-	-	-
December	-	-	-		-	-	-
SUBTOTAL	\$121,711	\$4,058	\$2,008		\$127,777	\$112,189	\$15,588
Comp. Auto				\$1,573	1,573		1,573
Thruway Use				2,466	2,466		2,466
Tax, Permits				\$4,039	\$131,816	\$112,189	\$19,627
	\$121,711	\$4,058	\$2,008				

Resp. #9

TELEPHONE COST

<u>Month</u>	<u>1972 Charge</u>	<u>1973 Charge</u>	<u>1973 Over Or (Under)</u>
January	945	952	7
February	937	908	(29)
March	1,019	966	(53)
April	1,056	890	(166)
May	861	925	64
June	973	974	1
July	883	1,005	122
August	917	898	(19)
September	906	987	81
October	897	672	(225)
November	967	753	(214)
December	949	682	(267)
TOTAL	<u>11,310</u>	<u>10,612</u>	<u>(698)</u>

* * * * *

Brieant, J.

By order to show cause dated March 18, 1974, petitioner moved this Court, pursuant to Sec. 10(j) of the National Labor Relations Act, as amended, [29 U.S.C. §160(j)], (the "Act"), for an order enjoining respondent, The Trading Port, Inc. (the "Employer") from engaging in certain conduct alleged to be in violation of the Act, and ordering the Employer to recognize and bargain with Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the "Union"), pending final disposition of unfair labor practice charges

presently before the National Labor Relations Board (the "Board"). A hearing was held on April 2 and 4, 1974.

This Court has jurisdiction of the subject matter pursuant to Sec. 10(j) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act. The Employer is engaged in the wholesale and retail grocery business at several locations in Albany, principally at North Manning Blvd. and Prospect Ave. (the "warehouse"). The Employer is engaged in interstate commerce within the meaning of Sections 2(6) and (7) of the Act."

Pursuant to Sec. 9 of the Act, the Union filed a petition for a certification election, which was held on December 4, 1973. The Union lost, and on December 7, 1973 filed objections to the election with the Board.

On December 10, 1973, the Union also filed charges with the Board against the Employer, alleging the Employer had committed unfair labor practices in violation of Sections 8(a)1, 3 and 5 of the Act. Based on these charges, a complaint was issued by the General Counsel of the Board on January 8, 1974 and amended on January 25 and February 15, 1974.

By order of the Board, these two separate matters, the unfair labor practices case, and the Union's objections to the election, were consolidated for hearings. Hearings in the consolidated case began at Albany, New York, on March 5, 1974 before the Hon. James V. Constantine, Administrative Law Judge, and were completed on March 21, 1974. A decision is not expected until the end of August or September.

The parties before me stipulated that the record of the hearings before the Administrative Judge was complete, that no further evidence need be taken for the purpose of this proceeding, and that this application be submitted on the transcript, and briefs to be filed with the Administrative Judge and this Court. Such briefs were received by me, and the matter fully submitted here on May 9, 1974.

Informal conferences held by the Court with counsel in an effort to achieve a compromise of the issues pending before this Court indicated that notwithstanding the stipulation of counsel, it was appropriate to take proof concerning the present employment status of certain employees of the Employer who had been laid off following the strike referred to below, and this was done.

The Board alleges that there is reasonable cause to believe the Employer interfered with, restrained and coerced its employees in the exercise of the rights guaranteed them by Sec. 7 of the Act, by discriminating in regard to employment to discourage membership in the Union, and by unlawfully refusing to bargain with the Union after September 4, 1973 when it had obtained membership cards signed by a majority of the employees. Petitioner further alleges that various other unlawful actions, such as interrogating employees concerning their union activities, and the activities of co-workers, threatening Union protagonists with loss of their jobs, threats of plant closure and discriminatory rehiring practices following a strike in September 1973, affected the outcome of the election.

The Regional Director seeks from this Court an order enjoining all such conduct and practices; directing reinstatement of certain employees; and compelling the Employer to bargain with the Union while matters remain before the Board awaiting its decision. The Board contends that unless immediately restrained, the Employer's violations of Sections 8(a)1, 3 and 5 will continue, with the result that the respondent's employees will be deprived of their rights under Sec. 7 of the Act.

The purpose of an interlocutory injunction pursuant to Sec. 10(j) is to maintain the status quo pending final adjudication of unfair labor charges. See National Maritime U. of Amer. v. Commerce Tankers Corp., 457 F.2d 1127, 1138 (2d Cir. 1972). The Regional Director need only show that there is reasonable cause to believe unfair labor practices have been committed, and that an injunction would be just and fair under the circumstances. See Commerce Tankers Corp., supra; McLeod v. Nat'l Maritime Union of America, AFL-CIO, 334 F.Supp. 34, aff'd, 457 F.2d 490 (2d Cir. 1971); Douds v. Milk Drivers and Dairy Employees Union, 248 F.2d 534 (2d Cir. 1957). The Board should have an opportunity to pass initially on questions involving construction of the Act and the merits of the charges. We should avoid, if possible, making findings of fact upon the same trial record which is before the Administrative Law Judge where such findings are unnecessary and may tend to inhibit the Administrative Law Judge or the Board in performing their assigned functions. See Boire v. Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 479 F.2d 778, reh. den., 480 F.2d 924 (5th Cir. 1973).

This Court's evaluation of the testimony therefore is limited to a determination of whether the Board has sustained its

burden of showing that there is a reasonable likelihood the charges will be sustained, and determining what, if any, interim relief is just and proper under all the circumstances.

In our reliance, by agreement of the parties, on the trial record before the examiner (consisting of some six days of hearings, almost 700 pages of testimony and voluminous exhibits) we are in a sense limited because the Administrative Law Judge has had a better opportunity to test the credibility of the witnesses.

The Employer operates a distribution warehouse and railroad siding in connection with its wholesale grocery business. It has been established for more than 25 years and, except for two captive stores owned by its affiliates, is engaged in a highly competitive field, serving retail and chain store grocery operations. Its customers, for the most part, also deal with competing suppliers located in Albany and elsewhere. Prior to the strike referred to below, it employed approximately 47 individuals as warehousemen. The parties agree that the work is interchangeable, and each employee may fill the work assignment of any other. Of the total employees, at least one was a part-time worker, and one

was "moonlighting" with The Trading Port while employed full time during the day as a fireman for the City of Albany.

On August 29, 1973, a group of about 19 employees met with Union representatives at the Union Hall. All signed union authorization cards designating the Union as their bargaining representative. Several then circulated cards among other warehouse employees. By September 4, 1973, 43 of the approximately 47 employees at the warehouse purportedly had signed cards. On September 4th, one of the employees, James Dillenbeck, called the President of the Union, Nicholas Robilotto, to advise him a majority had been obtained. A meeting was held at the Employer's warehouse that day with Isadore Tabachneck, President of the company. Mr. Robilotto declined to exhibit the cards to the Employer, but offered to allow a state labor mediator to examine the cards as a neutral third party and report to the Employer. This suggestion was refused. The Employer refused then, and has continued to refuse, to recognize and bargain with the Union.

On September 8, 1973 most of the employees who had signed cards met at the Union Hall and voted to strike. On this date, the President of the Union met with company officials, again offering

a card count by a neutral third party, but the offer was refused. The strike commenced on September 9th and continued until the end of September.

On September 29th the employees voted to return to work and petition the Board for an election. On the same day, Mr. Robilotto approached Samuel Tabachneck, Vice President of the company, and asked if the men could return to work. In effect, at this point, the strike was won by the Employer. Samuel Tabachneck told Mr. Robilotto that the workers could return and they should report to the Employer's premises on October 1st at 7:00 A.M. There is conflicting testimony as to whether the company agreed to rehire the strikers by seniority, assuming there was work, but the strike was ended. There have been no further meetings between the Union and the Employer.

Eleven employees had returned to work during the strike. Most of the remaining strikers reported for work on October 1st. None worked that day; all were issued lay-off slips so that they could collect unemployment insurance. Ten strikers were subsequently rehired, not by seniority, but allegedly on the basis of other factors, such as efficiency, salary and their attitude

toward their work. The remainder have not been rehired, nor have they been permanently replaced. No new employees were hired during or since the strike.

In September, the Employer notified the strikers by letter that it would no longer pay its portion of their medical insurance premiums, and the insurance was cancelled on September 29th. On November 1st, the Employer notified about 20 of the strikers by letter that they were "permanently" laid off.

The complaint alleges more than 100 incidents of violations of Sec. 8(a)1, as well as violations of 8(a)3, engaged in by the Employer in an attempt to defeat the Union in the December 4th election, including threats of plant closure, suggestions that the employees form a company union, interrogation of employees regarding their Union sympathies and how they, or their friends intended to vote, as well as discriminatory re-hiring practices after the strike. Many of these allegations are supported by testimony of employees, and denied under oath by management representatives. For example, several employees testified to threats of closure and discriminatory firing made by Isadore Tabachneck to the strikers while they were picketing. It is

admitted that Isadore Tabachneck spoke to the picketers daily, but it is contended that his remarks were made in a joking manner, were not threats, nor would the employees have interpreted them as threats.

Isadore Tabachneck is described in the record as a "kibitzer," even by the employees (Tr. p.102):

[Cross-examination of James Dillenbeck, employee]

"Q [by counsel for the company] Do you know the meaning of the expression 'a kibitzer'?"

A Yes.

* * *

Q Would it be fair to say he's [Isadore Tabachneck] a 'kibitzer'?

A Yes, sir, it would be fair to say that, yes.

JUDGE CONSTANTINE: That doesn't help me. You better tell me what a 'kibitzer' is.

MR. BOOKSTEIN: Well, you'll have an opportunity to observe that for yourself, sir.

JUDGE CONSTANTINE: I thought I knew Latin but I see I don't." 1

This issue is for the Administrative Judge to determine, since employees testified that they understood the remarks to be made seriously.

A cordial relationship seemed to exist between Isadore Tabachneck and the employees, who referred to him at the hearing as "Izzy". He seemed to have engaged in considerable provocative conversation with the picketers outside the company premises, apparently with no resulting assaults, and conducted additional "kibitzing" in a local bar known as the Orchard Tavern, where management and labor apparently were accustomed to join efforts in holding down the brass rail with their feet. The examiner may well find that some of the conduct of Isadore Tabachneck was that of a "kibitzer", but much of his testimony is very damning on an essential issue in the case; that is, whether The Trading Port maintained a seniority list and if so, whether that list was used with respect to layoffs, or merely with respect to vacation schedules and work assignments. The employee Gary Deyss was not known in the warehouse by his proper name, but had always been called "Farmer." According to Mr. Deyss, Isadore Tabachneck approached him on the picket line and the following colloquy occurred (Tr. p.399-400):

"Isadore Tabachneck came out and said I better look for another job, and then he came over to me and asked me what my name was. I told him it was Farmer because all the guys know me by Farmer in the warehouse.

He then went back in and came out with a -

Q Went back in where?

A The warehouse - and came back out with a seniority sheet. He said, 'You better really look for a job because your name isn't even on the list.' Then I told him my real name, Gary Deyss, and he said, 'You're way down on the bottom of the list.' He said, 'I would take Glenn's wife, Sharon, back before I ever take you back, and she doesn't even work there.'"

Employees testified that they were questioned numerous times by Ayrum Tabachneck, Personnel Manager and nephew of the President, as well as other management representatives, about how they intended to vote. They were told in substance that voting against the Union, or not voting, could insure their return to work. This is denied by the Employer and presents an issue of credibility to be decided by the Administrative Law Judge. I find, however, that the record is more than sufficient to establish reasonable cause to believe violations of Sections 8(a)1 and 3 of the Act did occur.

The Employer admits it has not rehired employees by seniority since the strike, but contends it has never used seniority in connection with hiring practices, and is under no obligation to do so now.

The employees testified that a seniority list exists, was shown to them during the strike, and in 1971, employees were rehired by seniority after a layoff. Avrum Tabachneck testified that among his objectives when considering who should be rehired after the September 1973 strike was "to get a man I felt had a good attitude toward the company." (Tr. p.542). When asked on cross-examination, "One of the criteria you say you used was whether or not the individual had a good attitude toward the company," Avrum Tabachneck replied "that's not what I said ... I said about the attitude about their job." (Tr. p.572).. The Board might interpret this as showing anti-union bias, when considered in conjunction with the other evidence in the case. Mr. Avrum Tabachneck testified that one of the methods he used in selecting "the best man for the job," (Tr. p.542) was to discuss their abilities with Mr. William Brunelle, who became warehouse manager on October 3, 1973, but apparently had not worked closely with the warehouse personnel during the prior two years. (Tr. p. 569). Mr. Avrum Tabachneck also admitted that he had been working at one of the company's retail stores at the time of the 1971 layoff, and therefore did not have first-hand knowledge of whether seniority was used in rehiring at that time. (Tr. p.570). On the

other hand, Joint Exhibit 4 in evidence before the Administrative Law Judge, when taken together with the seniority lists, is clear evidence that after the 1971 layoff, rehiring proceeded according to no set plan, and without regard to seniority. A conflict is thus presented, which may not be resolved without a determination of credibility best left to the Administrative Law Judge.^{2/}

Although it is not the province of this Court to decide the ultimate question of whether company hostility toward the Union supporters resulted in discriminatory treatment upon rehiring, the testimony on this subject is more than sufficient to support an injunction requiring the Employer to rehire strikers according to seniority to fill any positions which may be available, until the Board has rendered its decision.

Our Court of Appeals has held:

"First ... it must be determined whether the Regional Director has reasonable cause to believe that the unfair labor charges filed with the Board are true; and, second, that the issuance of any injunction would be 'just and proper' under the circumstances." Nat'l Maritime Union of America v. Commerce Tankers Corp., 457 F.2d 1127, 1138 (2d Cir. 1972).

For the reasons stated previously, the first requirement has been met here. As to the second, it is clear in this case that an injunction should issue to protect the Board's jurisdiction, and to preserve the Section 7 rights of the employees. The predictable results of interrogations by the Employer and discrimination in re-hiring based on union activities, coupled with threats of plant closure, would be to destroy or severely inhibit interest in the Union. By the time the Board issues its order and petitions for enforcement, the order will be futile if the Employer has succeeded by intervening continued violations of the Act, in frustrating the remedial purposes of a Board order. This will be particularly so if the Board directs a new election.

The legislative history of Section 10(j) of the Act shows clearly that the section was designed to prevent such a result:

"Experience...has demonstrated that...the Board has not been able in some instances to correct unfair labor practices until after substantial injury has been done.... Since the Board's orders are not self-enforcing, it has sometimes been possible for persons violating the Act to accomplish their unlawful objectives before being placed under any legal restraint and thereby make it impossible or not feasible to restore or preserve the status quo pending litigation.

* * *

In subsection (j) ... 'the Board is given additional authority to seek injunctive relief." S.Rep.No. 105, 80th Cong., 1st Sess. 8, 27 (1947).

The record before the examiner shows, as is so often the case, that during the strike some of the Employer's customers went elsewhere. The strike coincided in time with an increase in the costs of truck rental because of the energy shortage, and the Employer, either because of the strike or simultaneously with the strike, terminated certain delivery services which it had given some of its customers, withdrew from highly competitive, low-profit or non-profit areas of its business activity, and contracted the scope of its dealings. In part, this was voluntary, because the shutdown together with the threatened increase in the truck rentals had shown the respondent that parts of its business operation were unprofitable without regard to the strike. In part, this contraction of business was involuntary, because of customers lost as a result of the strike. The proof is adequate that following the strike, and even at the time of the hearings, the respondent did not need additional employees in its warehousing operation.

It would be inappropriate under the circumstances for this Court to compel the rehiring of unnecessary workers. It

would also seem inequitable at this stage of the proceedings, in effect, to order the Employer to fire employees who have been working since the strike, to rehire those of greater seniority who have not been working, or have been working elsewhere since October of 1973. This would be unduly disruptive to the conduct of the business, and to the lives of those who would have to be discharged. It would be an improvident exercise of judicial power while there remains at issue before the Administrative Law Judge the question of whether or not The Trading Port, prior to the strike, used seniority as a basis for the recall of workers when temporary layoffs took place due to insufficient work.

Of course, it remains possible, after a determination on the merits, that the Board might make such a direction, and in dealing with the Section 8(a)3 claim, may also direct a full award of back pay to any who were discriminated against when the rehiring occurred.

However, it does seem appropriate that, should its business improve, the Employer be required to rehire from among those not presently working, by seniority. The same equitable considerations justify enjoining the Employer from future violations of Sections 8(a)1 and 3.

Whether the Employer should be ordered at this time to recognize and bargain with the Union stands on a different footing. The election was not close, and while the Board may well direct a new election and may well find the election results tainted by the Employer's coercive conduct, it is not clear that the outcome of a new election would necessarily be different.

"[T]o grant injunctive relief which, in effect, would require respondent to bargain with the Union, would actually disregard the status quo and create a bargaining agreement which does not now exist. This is not a case where existing bargaining relations between a Union and a company, which are interrupted by an allegedly unfair labor practice, are continued by injunctive relief pending the outcome of the legal matter before the Board. The Court finds that petitioner in the instant case seeks to create a collective bargaining relation through an injunction. The set of rights and duties imposed does not exist and can not be determined to have existed until the Board resolves the case." Fuchs v. Steel-Fab, Inc., 356 F.Supp. 385, 387 (D.Mass. 1973).

See, McLeod v. Gen'l Elec. Co., 257 F.Supp. 690, rev'd., 366 F.2d 847 (2d Cir. 1966), which the Supreme Court set aside and remanded, 385 U.S. 533, for further consideration by the District Court in light of supervening events, without deciding the appropriate

standard for granting a bargaining order in a 10(j) proceeding. Clearly, neither the need for a showing of grave impact upon the public interest test applied by the District Judge in ordering bargaining in that case, nor the test applied by the Second Circuit in reversing the order to bargain, which requires a showing of irreparable harm or necessity to preserve the status quo, has been met here. We have been cited to no cases, nor have we found any in this Circuit, in which bargaining has been ordered in a 10(j) proceeding when no previous bargaining relationship existed.

Although employee unionization apparently began in this case in the Summer of 1973, no bargaining took place between the Union and the Employer. If this Court were to order bargaining now, it would be deciding the very issues before the Board and usurping the power given the Board under the Act. Should the Board decide that:

"the possibility of erasing the effects of past practices and of ensuring a fair election by the use of traditional remedies, though present, is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue."
N.J.R.B. v. Gissel Packing Co., 395 U.S. 575, 612 (1969).

But, see N.L.R.B. v. Truck Drivers Union Local No. 413, 487 F.2d 1099 (D.C. Cir. 1973), cert. granted, April 22, 1974, 42 U.S.L.W. 3591, which may affect the future of the Gissel rule and determine whether it will be extended further.

An order compelling bargaining based merely on the cards, should not issue from this Court, because:

"it has not the intrinsic quality of preserving the status quo or keeping intact the subject matter which is before the Labor Board for adjudication, and ... it would invade an area exclusively preserved to the administrative-legislative adjudicatory powers of the Board." Kaynard v. Lawrence Rigging, Inc., 80 LRRM 2600, 2604 (E.D.N.Y. 1972).

Having determined upon the entire record that there is reasonable cause to believe that respondent has engaged in, and is likely to continue engaging in, conduct proscribed by Sections 8(a)1 and 3 of the Act, and that appropriate injunctive relief is just and proper in order to preserve the issues presently before the Board in the present labor dispute, the Court concludes that respondent should be enjoined and restrained, pending further order of this Court or pending final disposition of the matters now before the National Labor Relations Board, from interfering with,

restraining or coercing its warehouse employees in the exercise of the rights granted them by Section 7 of the Act; from interrogating its employees concerning their membership in, activities on behalf of, or sympathy for the Union; threatening its employees with discharge, plant closure or other reprisals, or discouraging membership in the Union by any other means; hiring, after March 18, 1974, any person in positions previously held by the striking employees not rehired, without first offering such positions to such employees in the order of their seniority.

Settle order on notice, or waiver of notice, by submission to the Honorable Joseph R. Scully, Clerk of this Court, at his office at the United States Courthouse, Albany, New York.

Dated: Albany, New York
June 4, 1974

CHARLES L. BRIEANT, JR.

CHARLES L. BRIEANT, JR.

U. S. D. J.

(Of the Southern District of
New York, Sitting by Designation)

F O O T N O T E S

1. Mr. Tabachneck did provide Judge Constantine with the opportunity promised in the following exchange between Mr. Tabachneck and the Judge at the conclusion of Mr. Tabachneck's testimony (Tr. p.634):

"The Witness: Do you get Oscars for being the best witness?

Judge Constantine: You take that up with the lawyers.

The Witness: Thank you."

2. Mr. Houck and Mr. Bishop, two employees with seniority who actively supported the Union, have been rehired. Employer may or may not have known what Mr. Bishop's sympathies were, but it certainly was aware of Mr. Houck's, since he accompanied President Robilotto on both his visits to The Trading Port office made in support of the organization drive. According to the Employer, these men were rehired because they were skilled forklift operators, which the company required. Petitioner claims they were rehired in an effort to cover up anti-union hiring practices. Again, we leave interpretation of the Employer's actions to the Administrative Law Judge.

* * * * *

By verified petition dated March 13, 1974 and by show cause order dated March 18, 1974, Petitioner, Thomas W. Seeler, Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board, moved this Court pursuant to Section 10(j) of the National Labor Relations Act, as amended, for an order enjoining Respondent, The Trading Port, Inc., (A) from engaging in certain conduct alleged to be in violation of Section 8(a)(1), (3) and (5) of the Act, (B) to reinstate certain employees on account of conduct alleged to be in violation of Section 8(a)(3) of the Act, and (C) to recognize and bargain with Local 294, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America on account of conduct alleged to be in violation of Section 8(a)(5) of the Act, all pending final disposition of the matters now pending before the National Labor Relations Board.

The Court, upon consideration of the pleadings, evidence, briefs, and the entire record in the case, has made and filed its Findings and Conclusions, dated June 4, 1974, finding and concluding that there is reasonable cause to believe that Respondent has engaged in, and is likely to continue engaging in, conduct proscribed by Sections 8(a)(1) and (3) of the Act, and

that appropriate injunctive relief is just and proper in order to preserve the issues presently before the Board.

Now, therefore, it is:

ORDERED, ADJUDGED AND DECREED that, pending the final disposition of matters now pending before the National Labor Relations Board, Respondent, The Trading Port, Inc., its officers, agents, servants, employees, attorneys, and all persons acting in concert or participation with it or them, be and they hereby are enjoined and restrained from:

- (a) interfering with, restraining or coercing its warehouse employees in the exercise of the rights granted them by Section 7 of the Act;
- (b) interrogating its employees concerning their membership in, activities on behalf of, or sympathy for the Union;
- (c) threatening its employees with discharge, plant closure or other reprisals, or discouraging membership in the Union by any other means;
- (d) hiring, after March 18, 1974, any person in positions previously held by the striking employees not rehired, without first offering such positions to such employees in the order of their seniority; and it is further

ORDERED, ADJUDGED AND DECREED that Petitioner's motion be, and it hereby is, in all other respects denied.

Dated at Albany, New York

this 24 day of June, 1974

/s/ Charles L. Brieant, Jr.
CHARLES L. BRIEANT, JR.
U. S. D. J.
(Of the Southern District of New York,
Sitting by Designation)

EXCERPTS FROM STENOGRAPHER'S MINUTES

* * * * *

1 Northern District of New York
Albany, New York
April 2, 1974
1:30 p.m.

* * * * *

3 THE COURT: Gentlemen, we have had further discussion, which has included, among other things, the proposed stipulation, and I think perhaps now you might wish to mark and offer in evidence the official report of the proceedings before the National Labor Relations Board in this matter and the exhibits.

Now, Mr. Sheridan, are you prepared to do that?

MR. SHERIDAN: Yes, your Honor.

Possibly it should be a joint exhibit.

THE COURT: It may be marked as a joint exhibit.

State for the record the numbers of exhibits before the Administrative Law Judge.

MR. SHERIDAN: Yes, your Honor. Do you want each record marked as a separate exhibit?

THE COURT: I will take the entire official report of proceedings as a single exhibit, but for my record I would like to know exactly what is included.

MR. SHERIDAN: Yes, your Honor. There are six transcripts of six days of hearings.

THE COURT: That is testimony.

4 MR. SHERIDAN: Yes, your Honor. Plus there are --

THE CLERK: May I interrupt? Beginning on Tuesday, March 5, 1974, continuing on Wednesday, March 6, 1974, continuing through Thursday, March 7, 1974, then adjourned to March 19, 1974, and Wednesday, March 20, and Thursday, March 21, being the complete record, encompassing some 686 pages.

THE COURT: That is quite an extensive hearing, isn't it?

I will take that as an exhibit together with the exhibits which were introduced into evidence before the Administrative Law Judge. If you will just give the numbers of those exhibits before him, that might be helpful, Mr. Sheridan.

MR. SHERIDAN: Yes, your Honor. There are four sets of exhibits. One is the general counsel's exhibits which run from 1 through 17, and then the respondent's exhibits which run from 1 through 9. There are also joint exhibits, 1 through 4, and there are Board exhibits, which is denominated Board Exhibit 2.

Those are the exhibits, your Honor.

THE COURT: That entire official record will be received in evidence in this proceeding.

* * * * *

6

Northern District of New York
Albany, New York
April 4, 1974
9:30 A. M.

* * * * *

7

THE COURT: *** Mr. Sheridan, did you wish to be heard? Do you have a concession to make for the record?

MR. SHERIDAN: Yes, your Honor. The petitioner will concede that in the event any of the employees ordered reinstated, if at that time a reinstated employee is working full time earning as much as he did at Trading Port, then he will not have to be reinstated.

8

THE COURT: Your concession is noted for the record.

The Court has also been advised that as far as these persons are concerned, that their work is considered relatively interchangeable, although some of it, as I understand it from reading the trial record before Administrative Judge

Constantine, may have specialized skills or do better in one field than another, but basically it is considered their work is interchangeable.

Any particular job in the warehouse can be performed by anyone among those within the alleged bargaining unit; is that correct?

MR. SHERIDAN: That is my understanding.

MR. BOOKSTEIN: That's correct.

THE COURT: Mr. Tocci?

MR. TOCCI: Yes, your Honor.

THE COURT: Is there anything further which any of you would like to tender to the court before I close the record on this hearing?

MR. BOOKSTEIN: Not I, sir.

MR. SHERIDAN: Well, your Honor, I do have some of the employees here. Is it your desire or is it proper to put anybody in terms of their status
9 since the termination at Trading Port?

THE COURT: Well, I had indicated to all counsel of course I had approved your stipulation that this matter be decided on briefs and on the entire record before the trial examiner, as it used to be called, the Administrative Law Judge now, and I am prepared to proceed and adhere to that.

* * * * *

10 All right, do you want to make any offering of any sort or are you content to stand with what you have?

MR. SHERIDAN: I would like to call certain of the employees.

THE COURT: For what purpose?

MR. SHERIDAN: For the purpose of establishing what, if any, employment they have had since their termination at Trading Port.

THE COURT: Well, Mr. Bookstein?

MR. BOOKSTEIN: It would be my position, your Honor, that the testimony Mr. Sheridan would propose to offer is neither material nor relevant to the issue whether any of the employees are entitled to offers of reinstatement.

Though I don't quarrel with the proposition that the court has inherent power to relieve the parties of a stipulation, I would object to the proposed testimony as being not material or relevant to the issues.

THE COURT: I might be inclined to take some of that testimony subject to a reserved motion to strike. In other words, you may have a continuing motion to strike.

If you desire, you may cross-examine without waiving your rights in that regard.

* * * * *

13 THE COURT: Well, I will take proof as to the current and recent employment of those 8 men, if you wish to proffer it, in the absence of a stipulation.

MR. SHERIDAN: Yes, your Honor.

MR. BOOKSTEIN: I understand that the record reflects my objection to this as neither material nor relevant.

THE COURT: Yes. I'm reserving decision on that, Mr. Bookstein. You may have a continuing objection which will not be deemed to have been waived by cross-examination, and I will rule on it at the conclusion of the matter after the briefs have been received.

MR. BOOKSTEIN: Thank you, your Honor.

THE COURT: All right.

MR. SHERIDAN: I call James Dillenback to the stand, please.

JAMES A. DILLENBACK,

called as a witness on behalf of the petitioner, after being duly sworn, testified as follows:

THE COURT: You may examine, Mr. Sheridan.

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Mr. Dillenback, are you the same Mr. Dillenback who was suspended from Trading Port in September?

15 MR. BOOKSTEIN: Objection, your Honor.

THE COURT: Sustained.

MR. BOOKSTEIN: We concede that point. He is still employed by Trading Port.

THE COURT: Did there come a time when he ceased working there? Was he given a lay-off slip?

MR. SHERIDAN: Yes, your Honor. I think that is in the transcript.

Q. Are you presently employed? A. No, sir.

Q. When was the last time you were employed? A. When they moved the Albany High School, I worked for Neptune Movers.

Q. Do you know when that was? A. About a month ago.

MR. SHERIDAN: I have nothing further, your Honor.

MR. BOOKSTEIN: No questions, your Honor.

MR. TOCCI: Your Honor, may I?

THE COURT: Certainly, Mr. Tocci.

I didn't understand that you disputed he was unemployed. You had indicated to me that your position was that everybody has been out of work among this group. But you may cross-examine.

MR. TOCCI: There was some questions raised in chambers.

16 THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. Dillenback, are you presently engaged in looking for employment?

A. Yes, sir.

Q. And are you presently drawing unemployment benefits from the State of New York? A. Yes, sir, I am.

Q. When do these unemployment benefits terminate? A. I have received my 17th check this week and 26 is the limit as far as I know.

MR. TOCCI: That's all the questions I have.

THE COURT: All right.

Any cross-examination by Mr. Bookstein?

MR. BOOKSTEIN: No, your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

MR. SHERIDAN: Your Honor, I call Ira Stockwell to the stand, your Honor.

I R A C. S T O C K W E L L,

called as a witness on behalf of the petitioner, after being duly sworn testified as follows:

17

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Mr. Stockwell, are you currently employed? A. No, sir, I am not.

Q. And when was the last time you were employed? A. I would say 7 months back. Around August I was last employed for Schaffer and Grimm. That was for a week's work, that's all.

Q. When was this, Mr. Stockwell? A. Around August sometime. I don't know the exact date. It was only for one week. It was in August.

Q. You were formerly employed by Trading Port, Mr. Stockwell?
A. Yes.

MR. BOOKSTEIN: I object. He is still employed by Trading Port, Mr. Sheridan.

THE COURT: When did you last work at Trading Port?

THE WITNESS: Up until the time of the strike.

THE COURT: When was that?

THE WITNESS: The strike was what?

THE COURT: It was in September, wasn't it?

THE WITNESS: In September, right, sir.

Q. Now, since then, Mr. Stockwell, have you been employed?

18 A. No, sir, I haven't.

MR. SHERIDAN: I have nothing further, your Honor.

THE COURT: All right.

Do you have any cross-examination?

MR. BOOKSTEIN: I have nothing.

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. Stockwell, are you presently engaged in looking for work?

A. Yes.

Q. Are you presently drawing unemployment benefits from the State of New York? A. Yes, sir, I am.

Q. When will your benefits terminate? A. They will be terminated in two weeks. I have two more weeks to go.

MR. TOCCI: Thank you.

THE COURT: All right, you may step down?

(Witness excused.)

MR. SHERIDAN: I call Jack Houck to the stand.

JAMES F. HOUCK,

called as a witness on behalf of the petitioner, after being first duly sworn, testified as follows:

19

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Mr. Houck, are you currently employed? A. No, I'm not.

Q. And when was the last time you were employed? A. September.

Q. And who was your employer at that time? A. Trading Port, Incorporated.

Q. Since you were last actively employed with Trading Port, you have not been employed at all? A. No, I haven't.

MR. SHERIDAN: Nothing further, your Honor.

THE COURT: Mr. Tocci?

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. Houck, are you engaged in looking for work? A. Yes, I am.

Q. Are you presently receiving unemployment insurance benefits from the State of New York? A. Yes, I am.

Q. When do those run out? A. One week.

MR. TOCCI: That's all.

THE COURT: I am puzzled at the differences in when the unemployment benefits run out. I understand the first witness had some employment during the period but the rest of their benefits of the people with the greater seniority ought to be the same, shouldn't they?

MR. SHERIDAN: No, I don't believe so, your Honor.

THE COURT: All right, you may step down.

Same number of weeks.

MR. TOCCI: Your Honor, may I just speak on that? I think if they had some interim employment -

THE COURT: Then they would have more left.

MR. TOCCI: Yes. If they had no interim employment, like Mr. Houck, then it would be very shortly that they will run out.

(Witness excused.)

MR. SHERIDAN: I call Glenn Passino to the stand.

G L E N N P. P A S S I N O,

called as a witness on behalf of the petitioner, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Mr. Passino, are you presently employed? A. No.

Q. When was the last time you were employed?

21 A. By Trading Port or by -

Q. In any job? A. October 23.

Q. Of last year? A. Yes.

Q. And you have not been employed since then at all? A. No.

MR. SHERIDAN: Nothing further, your Honor.

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. Passino, are you presently engaged in looking for work?

A. Yes, sir.

Q. Are you presently receiving unemployment insurance benefits from the State of New York? A. Yes, sir.

Q. When do your benefits terminate? A. One week.

MR. TOCCI: That's all.

THE COURT: Any cross-examination, Mr. Bookstein?

MR. BOOKSTEIN: None, sir.

THE COURT: You may step down.

(Witness excused.)

MR. SHERIDAN: Richard O'Toole.

22

RICHARD M. O'TOOLE,

called as a witness on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Mr. O'Toole, are you presently employed? A. No, I am not.

Q. When was the last time you were employed? A. Trading Port, Incorporated, September.

Q. You haven't worked since? A. No, I haven't.

MR. SHERIDAN: Nothing further, your Honor.

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. O'Toole, are you presently looking for work? A. Yes, I am.

Q. Are you presently receiving unemployment benefits from the State of New York? A. Yes, I am.

Q. When do your benefits terminate? A. One week.

THE COURT: Do you wish to cross-examine?

MR. BOOKSTEIN: No thank you, sir.

THE COURT: You may step down.

23 (Witness excused.)

MR. SHERIDAN: Call Thomas Broderick.

T H O M A S B R O D E R I C K,

called as a witness on behalf of the petitioner, after first being duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Mr. Broderick, are you presently employed? A. No, sir, I'm not.

Q. When was the last time you were employed? A. March 15.

Q. Of this year? A. Yes, sir.

MR. SHERIDAN: Nothing further, your Honor.

THE COURT: Mr. Tocci.

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. Broderick, are you engaged in looking for work? A. Yes, sir, I am.

Q. And are you receiving unemployment insurance benefits from the State of New York? A. Yes, I am.

Q. When do your benefits terminate?

24 A. I believe I have seven more weeks.

Q. That would be seven more weeks? A. I believe so.

MR. TOCCI: No further questions.

MR. BOOKSTEIN: No questions, your Honor.

THE COURT: You may step down.

(Witness excused.)

THE COURT: It has been indicated to the Court, Mr. Sheridan, you have information which leads you to believe that the number 7 man on the alleged seniority roster has presently obtained employment, he is working at this time.

MR. SHERIDAN: Yes, your Honor.

THE COURT: All right, you may proceed.

MR. SHERIDAN: Call Michael Scanlon.

M I C H A E L S C A N L O N,

called as a witness on behalf of the petitioner, after being first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Mr. Scanlon, are you presently employed? A. No, I am not.

Q. When was the last time you were employed? A. March 7.

25 Q. Of 1974? A. '74.

MR. SHERIDAN: Nothing further, your Honor.

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. Scanlon, are you engaged in looking for work? A. Yes, I am.

Q. Are you receiving unemployment insurance benefits from the State of New York? A. Yes, I am.

Q. And when will your benefits terminate? A. I have two more weeks, I believe.

MR. TOCCI: Thank you.

MR. BOOKSTEIN: No questions, your Honor.

THE COURT: You may step down, Mr. Scanlon.

(Witness excused.)

MR. SHERIDAN: Your Honor, the next man on the list is not here, Mr. Simms. I would like to call Mr. Gary Dyss.

MR. BOOKSTEIN: For the record, I don't know what Mr. Sheridan means by the list.

THE COURT: He is talking about what he concedes to be a seniority list. That is a matter which I understand is in issue before the Administrative Law Judge.

26 MR. BOOKSTEIN: That's correct.

THE COURT: I have attempted to make that clear by referring to it as a purported seniority list because that is a question Judge Constantine will have to decide.

MR. BOOKSTEIN: Very good.

G A R Y D Y S S,

called as a witness on behalf of the petitioner, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SHERIDAN:

Q. Are you presently employed? A. No, I'm not.

Q. When was the last time you were employed? A. March 15, 1974.

MR. SHERIDAN: Nothing further, your Honor.

CROSS-EXAMINATION

BY MR. TOCCI:

Q. Mr. Dyss, are you engaged in looking for work? A. Yes, I am.

Q. Are you presently drawing unemployment insurance benefits from the State of New York? A. Yes, I am.

Q. And when will they terminate? A. Five more weeks left.

27 MR. TOCCI: Thank you.

MR. BOOKSTEIN: No questions, your Honor.

THE COURT: All right, you may step down, Mr. Dyss.

(Witness excused.)

THE COURT: For the record, how many other persons who are not working are here today? Raise your hands.

(Six raise hands.)

THE COURT: Six. If you wish to state the names for the record of the other persons who are present here, Mr. Sheridan, you may.

MR. SHERIDAN: Yes. Mr. Charles Baloo, Mr. Daniel Peasley, Mr. William Savage, Mr. Raymond Valerio, Mr. Fowler Rittick, Mr. Quigley.

THE COURT: All right. Anyone whose name has been left out?

Do you wish to make an offer of proof as to them? I think I have sufficient data already so I don't require all these other persons to testify in addition, but you may make an offer for the record if you wish.

As far as you are concerned, Mr. Bookstein, if you wish to call any of those people to see what they have been doing, you are not foreclosed from
28 doing so. You may do so without waiving your position.

The same applies to you, Mr. Tocci, if you want to call any of them.

MR. SHERIDAN: May I have a minute, your Honor?

THE COURT: Certainly.

(Pause.)

THE COURT: Back on the record.

MR. SHERIDAN: Your Honor, I would like to make an offer of proof that if these gentlemen testified, they would testify that none of them are currently employed.

THE COURT: And they are all looking for work?

MR. SHERIDAN: Yes, your Honor.

THE COURT: Except today.

MR. SHERIDAN: That's right, your Honor.

MR. TOCCI: I would like to also offer that if they were called to testify, they would all testify that they are receiving unemployment benefits except for Mr. Baloo who did not have enough qualifying time and, therefore, he does not receive unemployment benefits and has not during the interim.

THE COURT: This is the man who resigned and then resumed employment in order to get out of the profit-sharing?

MR. TOCCI: No, your Honor. That is a different gentleman.

29 THE COURT: I will accept that offer of proof and I don't think there is any need to take their testimony because we covered the testimony of the top people on the list.

Do you have anything further, gentlemen?

MR. SHERIDAN: No, your Honor.

MR. TOCCI: No, your Honor.

MR. BOOKSTEIN: No, your Honor.

THE COURT: I am closing the record. The decision is reserved. I ask you to comply promptly with the stipulation as to briefs. I know you all will, but if you find you are able to file your briefs earlier with the Administrative Law Judge, I hope you will extend the same courtesy to this Court. So you will send them down as promptly as you can together with any additional matter which you may wish to submit on the question of the preliminary or provisional injunctive relief.

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